THE END OF EXTERRITORIALITY IN CHINA

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CHINA: WHERE IT IS TODAY AND WHY
CONFLICT OF POLICIES IN ASIA
DEMOCRACY AND THE EASTERN QUESTION
OUR EASTERN QUESTION
AMERICA AND THE FAR EASTERN QUESTION
THE NEW FAR EAST

FOREWORD

The purpose of this work is to present as briefly as can be done with lucidity the conditions and circumstances that have attended the institution of exterritoriality in China and the reasons and methods of the Chinese Government in bringing the system to an end. With its termination in China exterritoriality, except as it applies to diplomats and special ambassadors, probably will fall into disuse, as China is the last important country where it has been in force.

Since it is hoped that this compilation will be of use to students of politics and international law a good deal of relevant documentary matter is introduced as context and appendices.

Although the author has been an employee of the Chinese Government during a considerable time when events related in this work were taking place, and still is, the opinions and views that are expressed are not to be taken as those of the Chinese Government except when so stated. There should be no difficulty in distinguishing the author's personal views and opinions from those culled from other sources. It is not implied, when views stated in reports made by the author to the Chinese Government coincide with action of the Government taken afterward, that the action was due to those reports. Those quotations serve to indicate phases and sidelights of the political scene that bear on the negotiations and their outcome and which governments as a rule are inhibited from publishing.

The author has drawn freely from the Syllabus On Exterritoriality compiled by the Chinese Citizens League, from his own book "China: Where It Is To-day — and Why," and from other sources. He has had access to unpublished diplomatic correspondence and records. He acknowledges gratefully the help he received from Chinese colleagues in the Ministry of Foreign Affairs and the Ministry of Justice at Nanking.

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I.

ON May 4, 1931, the National Government of China formally issued the following Mandate:

Mandate Abolishing Exterritoriality.* The abolition of the exterritorial privileges of foreign nationals in China has been unanimously desired by the Chinese people and persistently urged by the Chinese Government.

It was declared by a mandate issued on the 28th day of the 12th month of the 18th Year of the Republic (December 28, 1929) that all Foreign Nationals in the territory of China shall abide by the laws, ordinances and regulations of the Central and Local Governments of China.

A petition now submitted by the Executive Yuan and the Judicial Yuan states that for the execution of the said Mandate a set of regulations (consisting of 12 articles) governing the exercise of jurisdiction over Foreign Nationals in China has been drawn up by the competent Departments and duly examined by the Legislative Yuan.

These regulations are hereby promulgated and it is decided and declared that they shall come into force on the first Day of the first month of the 21st year of the Republic (January 1, 1932).

II.

On May 12, 1931, the Chinese National People's Convention assembled at Nanking unanimously supported the Government's Mandate abolishing exterritoriality by adopting the following manifesto:

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* Throughout this work the word "Exterritoriality" will be used instead of the longer "Extraterritoriality". If authority is needed for this shortening of the prolix term, it can be said that the late Sir Francis Piggott, former Chief Justice at Hongkong, used the shorter word in his writings on the subject,

Manifesto on the Abolition of Unequal Treaties. "For over eighty years China has been shackled by the fetters of the unequal treaties. Although these treaties were not all concluded simultaneously they resemble one another in their impairment of China's sovereign rights as an independent nation and jeopardizing her national existence and normal development. Public opinion in China during those days was inarticulate and the autocratic Government of the day was inveigled into concluding treaties repugnant to the principles of justice and equality — instruments investing the beneficiaries with unilateral rights and privileges — a transaction which was not only in contravention of international principles and justice but also constituted a blot on the escutcheon of modern civilization.

"Ever since the conclusion of these treaties their unilateral obligations in favour of the Powers have operated to cripple and impoverish China's economic life and retard her political transformation as well as the consummation of her latest national endeavours. Within the last three or four decades, and particularly since the European War when the principle of the self-determination of races was firmly established, the Chinese people have as the result of their awakening to the sense of nationalism come to feel the increasing irksomeness of these unequal treaties and dedicate themselves with added determination to the task of liberating China from her shackles. In guiding the National Revolution Dr. Sun Yat-sen, the late Leader

of the Kuomintang Party, focussed his attention in this direction. The abrogation of the unequal treaties as well as the conclusion of new treaties based upon the principle of mutual respect for sovereign rights having been listed as one of the cardinal policies of the Kuomintang Party, therefore represents the unanimous demand of the Chinese people. Consequently the National Government has since its establishment, in conformity with the wishes of the Chinese people concerning the rectification of unequal international relations and the conclusion of new treaties of equality and reciprocity, repeatedly issued explicit declarations in the hope that the Powers concerned would thoroughly understand China's aspirations and endeavour to meet them. This is because the Chinese people, out of their intense love for peace and justice, are unwilling to ascribe any disinclination on the part of the nations enjoying such unilateral privileges to relinquish them on their own initiative. Unfortunately as events have proved, although there are not wanting explicit declarations on the part of a section of the nationals of the Powers concerned in support of China's aspirations, yet the Governments of these nationals are still insisting upon the validity of their treaties or by adducing irrelevant pretexts seek to evade the question or prolong the regime of such unequal treaties. This is amply demonstrated by the latest exterritoriality negotiations—an occurrence greatly beyond the expectation of the Chinese people and one which they cannot but regard with profound regret.

"China today is no longer the China of before the National Revolution. Now that the country has been unified, the National Government, representative of the entire nation, is endeavouring its utmost to push forward national reconstruction and promote the welfare of the people. All such unequal treaties and their auxiliary outgrowths being an impairment of China's territorial sovereignty and serious hindrance to China's political as well as economic development, if allowed to continue, will not only jeopardize China's national independence and security but also restrict and hamper all efforts in the direction of political rehabilitation and national reconstruction. How can they be further tolerated by the Chinese nation now dedicated to the three Principles of Nationalism, Democracy and Livelihood?

"Having been entrusted by the entire nation, the National People's Convention can not remain indifferent to such a menace to China's national independence and security. In the opinion of the National People's Convention, the abrogation of the unequal treaties cannot be delayed any further if the nation is to be liberated from their shackles. Furthermore, instead of living on hopes, — an attitude which is already superfluous — a decisive step should now be taken to declare the abolition of those unequal treaties. Because in accordance with the accepted usage of International Law, on the occurrence of any vital change of circumstance the contracting party is entitled to avail itself of such change of circumstances.

to denounce its Treaty and replace it with one in harmony with the principle of equality as well as in keeping with the actual conditions in order that the welfare of such contracting party may not be prejudiced and international good faith and peace may not be endangered. The Treaties between China and the various Powers having been concluded several decades ago, no one will deny that there has been vital and manifest change of circumstances since those treaties were concluded. How can the Chinese people recognize the existence of such unsuitable and obsolete Treaties endangering China's very national existence? This is the first reason for the abolition of the unequal treaties.

"China is a member of the League of Nations. Article 19 of the League of Nations Covenant provides as follows:—

> "The Assembly may from time to time advise the reconsideration by members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."

"In pursuance of the foregoing provision, the Chinese delegate, Dr. C. C. Wu, drew the attention of the League of Nations Assembly to its import, but China's request did not meet with the respect it deserves. Nevertheless, the fact is inescapable that such provision must be the appropriate international procedure. There is not the slightest doubt that the unequal treaties concluded between China and the

various Powers are no longer suited to the changed conditions in view of their unilateral privileges and obligations as well as their impairment of China's Sovereignty and territorial integrity. In the struggle for racial equality and the safeguarding of international peace, such unequal treaties can no longer be allowed to continue in force. This is the second reason for the abolition of the unequal treaties.

"In their anxiety to maintain such unequal treaties, the Powers have often adduced irrelevant pretexts and frequently implemented China's internal developments as conditions for bargaining. They seem to have overlooked the fact that improvements in China's internal administration are predicated upon their own urgent necessity and therefore did not require any external interference, still less any external suggestion. From the viewpoint of accomplished facts, the completion during the recent years of various important codes of Law, and the reorganization of the administrative machinery are sufficient to testify to China's ability as well as her determination to achieve progress save in cases where China's efforts have been hampered by such unequal treaties. For example, in the past, in regard to China's demand for the restoration of tariff autonomy, the abolition of likin was repeatedly insisted upon by the Powers as the precedent condition. Moreover, it was even stated after the restoration of tariff autonomy that China would have no intention to abolish likin. As matter of fact, upon the complete exercise of tariff autonomy, the

National Government has, regardless of the extent of sacrifice, abolished likin throughout the whole country and removed this long standing impediment to trade. This is sufficient to demonstrate the unreasonable attitude of the Powers in trying to make capital out of China's internal developments. The Chinese people are resolutely determined to revolutionize their political administration and will not be deterred by the unwillingness on the part of the Powers concerned to relinquish their unequal treaties.

"In view of the foregoing circumstances, the National People's Convention, being representative of the entire Chinese people, hereby solemnly declare the following to the entire world:—

"1. The Chinese people will not recognize all the past unequal treaties imposed by the Powers upon China.

"2. The National Government shall, in conformity with the late Dr. Sun Yat-sen's testamentary injunction, achieve with the least possible delay China's equality and independence in the family of nations.

"The foregoing decisions are designed not only to safeguard the existence of the Chinese race but also to remove a serious hindrance to international peace as well as a blot on the escutcheon of modern civilization. The National People's Convention are confident that all the nations of the world will clearly understand such a manifestation of the Chinese people's firmness and determination. The National

People's Convention are also confident that the entire Chinese people will unanimously support such decisions, regardless of any obstacles or sacrifices."

A foreign newspaper correspondent who described the scene at the People's Convention when the manifesto was adopted wrote: "The entire audience and delegates rose as one man and cheered for five minutes".

III.

Statement by Dr. C. T. Wang, Minister for Foreign Affairs, (May 4th, 1931). "On December 28, 1929, a Mandate was issued by the National Gnvernment declaring that 'on and after the first day of the first month of the nineteenth year of the Republic (January 1st 1930), all foreign nationals in the territory of China who are now enjoying exterritorial privileges, shall abide by the laws, ordinances and regulations duly promulgated by the Central and Local Governments of China. The Executive *Yuan* and the Judicial *Yuan* are hereby ordered to instruct the Ministries concerned to prepare as soon as possible a plan for the execution of this Mandate and to submit it to the Legislative *Yuan* for examination and deliberation with a view to its promulgation and enforcement.'

"Two days later the present Minister for Foreign Affairs issued a statement in elucidation of the foregoing Mandate, the concluding paragraph of which read as follows:—

'The Chinese Government, relying on the sympathy already shown and assurances given by the Powers

concerned, believes that there is no difference of opinion between those Powers and China regarding the principle involved, and it is prepared to consider and discuss within a reasonable time any representations made with reference to the plan now under preparation in Nanking. In this respect the issuance of the Mandate of December 28th should be regarded as a step towards removing the cause of constant conflict and at the same time promoting the relations between Chinese and foreigners.'

"In pursuance of the above declaration, the National Government has been conducting relevant negotiations with the Governments of the six Powers concerned during the past sixteen months. While certain of these Governments have concluded satisfactory arrangements with the National Government, the negotiations with the other Powers, including Great Britain and the United States, have not yet yielded such a solution as is desired by the National Government.

"The National Government appreciates the very warm sympathy already shown by these Powers, especially Great Britain, in the endeavour to consummate China's legitimate aspirations. It is, however, to be sincerely regretted that they are not prepared at this juncture to meet completely the unanimous, ardent wishes of the Chinese Government and people.

"Dr. Sun Yat-sen in his last will and behest enjoined upon the National Government to convene a National People's Convention and to abolish the unequal trea-

ties with the least possible delay. On the eve of the convocation of the National People's Convention, the National Government is reminded of its other duty, namely, the abolition of unequal treaties, especially the abolition of extraterritoriality. In the circumstances, the National Government has no other alternative but to recognize and to declare that the extraterritoriality negotiations with the few remaining Powers have reached an unfortunate *impasse*, and to issue today's Mandate as well as the Regulations governing the exercise of jurisdiction over foreign nationals in China.

"These Regulations are designed to remove effectively the cause of constant conflict and at the same time to promote in the largest degree the relations between Chinese and foreigners. It is, therefore, the earnest hope of the Chinese Government and people that their intentions in this regard will be construed in the proper spirit, and be endorsed by all right-thinking people of the world."

IV.

REGULATIONS

(PROMULGATED BY THE NATIONAL GOVERNMENT ON MAY 4. 1931).

ARTICLE I.

The term "foreign nationals" used in these Regulations exclusively refers to those foreign nationals who enjoyed extraterritorial privileges in China on the thirty-first day of the twelfth month of the eighteenth year of the Republic.

ARTICLE II.

Foreign nationals shall be subject to the jurisdiction of the Chinese Courts of Justice of all instances.

ARTICLE III.

In the District Court in the Special Area of the Three Eastern Provinces and in the District Courts at Shenyang, Tientsin, Tsingtao, Shanghai, Hankow, Chungking, Foochow, Canton and Kwunmin, as well as in the Provincial High Courts to which such District courts respectively belong, Special Chambers shall be established for the trial of civil and criminal cases in which foreign nationals are defendants or accused.

ARTICLE IV.

The Chief Judge of the Special Chamber shall be the President of the Court to which it belongs.

ARTICLE V.

Where a civil or criminal case involving a foreign national as defendant or accused arises within the jurisdiction of a Court other than those mentioned in Article III, the defendant or accused may request in writing that the case be heard by that Court.

ARTICLE VI.

To the Special Chambers there shall be assigned a certain number of legal counsellors who shall be selected by the Ministry of Justice for appointment by the Government from among legal experts of high moral character who possess the qualifications necessary for appointment to judicial offices.

The legal counsellors are not confined to Chinese.

The legal counsellor may submit his views in writing to the Court but shall not interfere with the trial of the case.

ARTICLE VII.

The arrest or detention of a foreign national as well as the search of his private residence or other premises shall be effected according to the Code of Criminal Procedure.

Any foreign national who is arrested on the suspicion of having committed an offence under the Criminal Code or other criminal laws shall be sent to the Court for investigation not later than twenty-four hours after arrest.

ARTICLE VIII.

At the request of the party or parties concerned, the Courts shall recognize as valid the agreements for arbitration entered into between foreign nationals or between foreign nationals and other persons, and shall also enforce the awards made in pursuance of such agreements except where:

1. The award is contrary to public order;
2. It is contrary to good morals; or
3. It should be regarded as invalid according to the general principles of law.

ARTICLE IX.

Foreign nationals parties to civil or criminal cases may employ according to law Chinese or foreign lawyers as representatives or counsel.

The Regulations for Lawyers and other laws and regulations concerning lawyers are applicable to the above-mentioned foreign lawyers.

ARTICLE X.

Foreign nationals having committed police offences shall be tried by the Courts of Justice or police tribunals.

The penalty to be imposed by a police tribunal shall be limited to a fine not exceeding fifteen dollars except for subsequent offences.

Where the fine mentioned in the preceding paragraph is not paid within five days after its imposition, it shall be commuted to detention at the rate of one dollar for one day. If the amount is less than one dollar, it shall be reckoned as one day.

ARTICLE XI.

The places for the imprisonment or detention of foreign nationals shall be designated by the Ministry of Justice.

ARTICLE XII.

The date on which these Regulations shall come into force as well as the period during which they shall remain in force shall be declared by a mandate of the National Government.

BACKGROUND

ORIGINS OF EXTERRITORIALITY

PASSING OF EXTERRITORIALITY

EXTERRITORIALITY IN CHINA

CHINA'S RESISTANCE TO EXTERRITORIALITY

BACKGROUND

I.

Origins of Exterritoriality.* An authority has said that religion is the foundation of exterritoriality. While that may be so in Europe and Africa and Western Asia it is not so in regard to China. The distinction has significance now.

The earlier civilized states recognized differences in religion as the primary reason for placing persons under special jurisdictions. The Greeks and Phenoecians were exempt from local jurisdiction in ancient Egypt, and in ancient Greece there were special magistrates to try cases involving foreigners. In ancient Rome there were special courts for foreigners, and this principle was extended throughout the Roman Empire. In later times mediaeval Europe further developed exterritoriality by recognizing the princi-

*References:—Liu, Shih Shun, *Extraterritoriality: Its Rise and Its Decline*, New York, Columbia University Studies, 1925; Keeton, G. W., *The Development of Extraterritoriality in China*, 2 vols., London, Longmans, Green & Co., 1928. Koo, V.K.W., *Status of Aliens in China*, New York, Columbia University Studies, 1912; Morant, G.S. de, *Extraterritorialité et intérets étrangers en Chine*. Paris, Paul Genthner, 1925; Hinchley, F. E., *American Consular Jurisdiction in the Orient*, Washington, Lowdermilk, 1906: Hall, W.E., *A Treatise on the Foreign Power and Jurisdiction of the British Crown*, Oxford, Clarendon Press, 1844: Tarring, C. J., *British Consular Jurisdiction in the East*, London 1887; Martens, F., *Das Consularwesen und die Consular Jurisdiction in Orient*, Berlin, 1874; Miltitz, A. de, *Manuel des Consuls*, 2 vols. in 5, London, 1837-41; Morse, H. B., *International Relations of the Chinese Empire*, 3 vols., London, Macmillan, 1910-18; *Parliamentary Papers*, 1923 *Cmd.* 1814), Turkey, No. 1, (1923); *Claims of Persia before the Conference of the Preliminaries of Peace at Paris; Siam's Case for Revision of Obsolete Treaty Obligations* (1919). *Siam Treaties with Foreign Powers* 1920-1927, Norwood, Plimpton Press, 1928.

ple, when foreigners got into litigation among themselves or with subjects of a state wherein they resided or were sojourning, that the law of the complainant prevailed. In modern times a basic formula of exterritoriality is that the plaintiff must follow the defendant into the latter's court. In the middle ages the free cities of Europe appointed judge-consuls who had jurisdiction over foreign merchants. In mediaeval Europe foreign consuls usually had judicial functions. There are survivals of the system in parts of Europe today.

The rise of the Mohammedan world brought further applications of exterritoriality, the Testament of Mohammed granting such privileges to Christians. In 1453 the Sultan granted the capitulations excluding the infidels (Christians) from the application of local laws within the Ottoman Empire and putting them under the jurisdiction of their own consuls.

II.

Passing of Exterritoriality. There are several methods whereby exterritoriality has been abolished or modified, namely, annexation of territory by a state which does not grant such exemptions, transfer of jurisdiction, separation, protectorate, diplomatic negotiation, unilateral cancellation. Recent history provides examples of all these methods.

An outstanding example of forcing the cancellation of exterritoriality by unilateral action is that of

Turkey during and following the Lausanne conferences in 1922 and 1923. For nearly seventy years Turkey had been trying to get the capitulations abolished. She raised the question at Paris in 1856 and the Powers agreed to convene a conference to be held at Constantinople for that purpose, but it was not done. By treaties made in 1917, 1918 and 1921, with Germany, Austria and Russia, those nations gave up exterritorial privilege in Turkey. At Lausanne the Turks positively refused to continue the system and the Turkish delegation declared that "the Government of the Grand National Assembly of Turkey in no wise agree to the reestablishment of the capitulations." Twice before, in 1881 (partial abolition) and in 1914 (total abolition) Turkey strove to end the capitulations, but intimidation by the Powers prevented action. Having, by forcibly ejecting the Greeks from Asia Minor, shown that the new Turkey was aroused and able to put up a good fight, the Turkish Government proved stubborn and the Powers yielded. In a treaty signed on July 24, 1923, the abolition of the capitulations was provided for. In a separate declaration, the Turkish Government proposed to engage for a period of not less than five years a number of European legal counsellors to be selected from a list prepared by the Permanent Court of International Justice from among jurists nationals of countries which did not take part in the World War. Those legal counsellors were to serve in an advisory capacity and not to have any judicial functions.

Following the restoration of the Mikado, the Japanese Government began efforts to end exterritoriality in that country. In 1871 a commission was sent abroad with that object, but it failed to accomplish anything definite. From 1878 to 1887 a series of diplomatic conferences were held at Tokyo to discuss this question but without an agreement being reached. Mexico gave up exterritoriality in Japan in 1888 and Portugal abandoned it in 1892. For some years the insistence by the principal Powers that foreign judges should be used in courts taking jurisdiction over foreigners in Japan prevented any settlement, the Japanese Government refusing to accept that condition. By a treaty signed July 16, 1894, Great Britain gave up exterritoriality unconditionally. This was an essential prelude to the signing of the first Anglo-Japanese alliance. It is an error to attribute the abolition of exterritoriality in Japan to Japan's military success in the war against China. That Japan had attained respectable rank as a military and naval power had been recognized for some years previously, as the alliance with Great Britain attested. The treaty with the United States of America ending exterritoriality was not signed until after the China-Japan war had started, but the friendly disposition of the American Government had long been manifested and the conclusion of a new treaty was certain without regard to the war. Treaties with all the other nations followed soon. All the treaties provided for an intervening period to permit the new Japanese law

codes that had been under preparation for a decade to come into effect. While the ostensible reason for ending exterritoriality in Japan was the political and judicial reforms in that country, the more decisive reason was Japan's improved military and naval status, which made it practically impossible for the Powers to sustain the position in the face of determination of the Japanese to end it.

The breach in exterritoriality in Siam came in 1883, when Great Britain consented to modifications of the system as it applied to British subjects in that country. Between 1883 and 1896 Great Britain made agreements giving Siam a right to establish an International Court composed of Siamese judges and administering Siamese law, and submitting British subjects to the jurisdiction of that Court, a privilege of British consuls to intervene being reserved. Similar agreements were made by other nations. At the peace conference in Paris, in 1919, Siam asked for the complete abolition of exterritoriality, but failed to procure it except from Germany, Austria and Hungary. In 1920 the United States of America made a treaty with Siam giving up exterritorial rights in that country, but providing for a right of evocation to be exercised by American diplomatic and consular officials in any case where American citizens were defendants. This evocation could be exercised before the promulgation and putting into effect of all the new Siamese codes, and for five years thereafter, but no longer. All the

other powers, in the years 1924 to 1926, made treaties with Siam in almost the same terms.

Countries where exterritoriality was ended by annexation are Algiers in 1830 when France took over that region; Madagascar for the same reason in 1896; Samoa in 1899; Congo in 1908; Korea in 1910 when Japan annexed that kingdom; Tripoli in 1912 when occupied by Italy. Countries where exterritoriality was ended by transfer of jurisdiction are Cyprus in 1878 when occupied by Great Britain; Bosnia and Herzegovina in 1878; certain foreign leaseholds in China when taken over by Great Britain, Russia, Japan, Germany and France; Palestine, Iraq, Syria and the Lebanon, placed under the "A" mandates by the Treaty of Versailles in 1919. Countries where exterritoriality terminated by separation, or revolution, are Greece in 1830; Roumania in 1877; Serbia in 1878; Montenegro; Bulgaria. Regions where exterritoriality ended through a protectorate are Zanzibar, Tonga, Tunis, Morocco, Egypt (conditionally).

III.

Exterritoriality in China. There is a marked difference between the origin and development of exterritoriality in China and other Far Eastern countries and in the Musselman countries. Confucianism and Buddhism do not discriminate against other religions or against foreigners, so there was slight religious reason or justification for the establishment of exterritorial status in China. It appears that early foreign

religious missions to China were indifferent about it; indeed, some mission organizations adopted Chinese dress, even the queue, and sought to conform in all ways with people of that country.

Reasons for establishing exterritoriality in China (and in Japan) were founded almost entirely on complaints against the laws and the administration of justice. Those complaints were: the alleged severity of Chinese punishment, especially in homicide and affray cases; the ancient doctrine of responsibility, which at times made the family of an offender jointly responsible and punishable for his actions, and even made towns and communities responsible and punishable for acts of members of the community; judicial torture to exact evidence and confessions; unsatisfactory condition of Chinese prisons; denial of the right to bail.

The first quasi-exterritorial treaty of China was made with Russia in 1689 at Nirchinsk. That and later agreements provided for the reciprocal surrender of criminals and offenders at the frontiers and seem to have involved nothing more than such application and fell far short of establishing the principle of exterritoriality as that was interpreted and applied later. There followed an extended time when exterritoriality remained in a nebulous state, at times applied one way, at times another way. Celebrated cases when foreigners came under the exclusive jurisdiction of Chinese authorities were:

The Success and Stormant case. In 1780 a French sailor working on an English ship was executed by order of the Governor of Kwangtung for having killed a Portuguese sailor from another English ship.

The Lady Hughes case. In 1784 a gunner of the English ship Lady Hughes was sentenced to death by the Chinese authorities for having killed a Chinese while firing a salute.

The Terranova case. In 1821 one Terranova, an Italian member of the crew of the American ship Emily, caused the death of a Chinese woman by throwing an earthen vessel at her. The offender was surrendered to the Chinese authorities and sentenced to death.

During the same period there were noteworthy cases when jurisdiction over foreigners in Chinese territory was exercised by foreign authorities, viz:

In 1735 the crew of a Dutch ship mutinied at Canton. The captain of the ship asked the local British officials to seize and punish the mutineers, whereon the British notified the local Chinese government of the case. The Chinese abandoned jurisdiction and the ringleaders were arrested by the British authorities.

In 1778 an affray between crews of Dutch and English ships at Canton caused the Dutch shipmaster to demand damages. The incident was adjusted without interference by the Chinese officials.

In 1800 a Siamese sailor on a Dutch ship killed a Chinese at Macao. A dispute arose as to whether

the Portuguese or Chinese had jurisdiction. The Portuguese assumed jurisdiction and the Chinese tacitly assented.

In 1826 a Chinese was murdered at Macao and Chinese local officials demanded that the offender be handed over to them. The local Portuguese authorities refused to turn the offender over, tried him and sentenced him to death, the Chinese tacitly acquiescing.

Those cases suffice to show a tendency of foreign countries as time passed to insist on retaining jurisdiction over their nationals in China. This particularly was so of the British, and Great Britain took steps to clarify the situation. In 1833 an Act of Parliament provided for the creation of a court with criminal and admiralty jurisdiction over British subjects in China. An attempt was made in 1838 to give that or a new court civil jurisdiction, but the bill failed to pass. The first occasion that the court sat was to try British subjects accused of the murder of a Chinese at Hongkong in 1839. In 1844 a Chinese mob attacked the American consulate at Canton and a Chinese was killed. The Chinese officials demanded the surrender of the person who had killed the man, which the American consul refused to do. The matter was compromised by the U. S. Government paying a money compensation to the family of the deceased. The recurrence of such clashes of jurisdiction and authority led to the definite introduction

of exterritoriality. Treaties containing exterritorial provision were made, viz:

1. General Regulations of Trade attached to the Sino-British supplementary treaty of Oct. 8, 1843.
2. Sino-American Treaty, July 3, 1844.
3. Sino-French Treaty, Oct. 24, 1844.
4. Sino-Norwegian- and Swedish, March 20, 1847.
5. Sino-Russian Treaty, June 13, 1858.
6. Sino-American Treaty, June 18, 1858.
7. Sino-British Treaty, June 26, 1858.
8. Sino-French Treaty, June 27, 1858.
9. Sino-German Treaty, Sept. 2, 1861.
10. Sino-Danish Treaty, July 13, 1863.
11. Sino-Dutch Treaty, Oct. 6, 1863.
12. Sino-Spanish Treaty, Oct. 10, 1864.
13. Sino-Belgian Treaty, Nov. 2, 1865.
14. Sino-Italian Treaty, Oct. 26, 1866.
15. Sino-Austro-Hungarian Treaty, Sept. 2, 1869
16. Sino-Peruvian Treaty, June 26, 1874.
17. Sino-British Agreement, Sept. 13, 1876.
18. Sino-American Supplemental Treaty, Nov. 17, 1880.
19. Sino-Brazilian Treaty, Oct. 3, 1881.
20. Sino-Portuguese Treaty, Dec. 1, 1887.
21. Sino-Japanese Treaty, July 21, 1896.
22. Sino-Mexican Treaty, Dec. 14, 1899.
23. Sino-Swedish Treaty, May 24, 1908.
24. Sino-Swiss Treaty, July 13, 1908.

IV.

China's Resistance to Exterritoriality. In the beginning exterritoriality was grounded on common sense. By mutual agreement the western and oriental governments recognized the differences of their institutions, customs, habits, religions, legal processes, punishments. Beyond doubt most of the exterritorial

treaties were "unequal", as Chinese now protest. For while westerners in oriental countries were under their own laws, the same privilege was not given to orientals in western countries. But in regard to China it is worth noting that when exterritoriality was established there the Chinese seemed to care little about making the status mutual. Chinese for a long time had a contempt for the western nations; they regarded them as inferior in culture and civilization and, except for some merchants and coolies, they did not want to visit or to live in western countries. At first the Chinese did not want to trade or have any intercourse with westerners. Those contacts were more or less forced on them, as was also the case with Japan. After trade relations became established at Canton the foreigners were limited to a specified district and relations with them were circumscribed. Thus the idea of segregating foreigners originated with the Chinese. There is some justice in the contention of foreigners that in ending exterritoriality abruptly the Chinese are inconsistent.

In respect to those propositions the Chinese have changed their minds. They say that conditions have changed and the new Chinese policy is in keeping with the situation of the world today. The change of mind commenced when the first young Chinese students went to attend college in America and Europe and learned things there that altered their outlook. Since then the shift of psychology has been fed from a thousand sources.

The determination of Chinese to abolish exterritoriality is a direct outgrowth of the period of foreign imperialism visavis that country. In some quarters there is a disposition to ridicule the Chinese slogan of "down with foreign imperialism" and to say that such a thing does not exist, implying that it never did exist. The New International Dictionary defines imperialism thus: "The policy, practice, or advocacy of seeking, or acquiescing in, the extension of the control, dominion, or empire of a nation, as by the acquirement of new territory or dependencies, especially when lying outside the nation's natural boundaries, or by extension of its rule over other races of mankind, as where commerce demands the protection of the flag." It is as certain that for a period of about eighty years after the middle of the Nineteenth Century China felt the pressure of every kind of foreign imperialism indicated by that definition as it is that there was recently a World War. Every principal Power, with the possible exception of the United States of America, applied that pressure in some degree. Imperialistic policy of some governments clouds China's political horizon today. If, as seems true, most of the Powers have sincerely abandoned the imperialist motive in relations with China, the effects and institutions of the foreign imperialism of the past still exist on all sides and impair China's sovereignty.

Foreigners claim to have certain "rights" in China. Chinese now assert that foreigners do not have any

rights in China that are not universal with international law and custom; they have only some special privileges. It is a nice distinction, but important. Privilege is defined as "a right or immunity granted as a peculiar benefit, advantage, or favor". Some rights are said to be inalienable. Privileges never are inalienable. They may be withdrawn by the same authority that granted them or lost for many reasons, as by abuse. "Abuse of privilege" has a recognized meaning.

The active resistance of Chinese to exterritoriality may be said to have begun at the start of the Twentieth Century. In pursuance of Article XI of the International Protocol of September 7, 1901, new commercial treaties were made between China and several foreign Powers by which the Powers engaged to relinquish their exterritorial status in China when they were satisfied that "the state of Chinese laws, the arrangement for their administration, and other conditions" would warrant them in so doing. Chinese diplomats were by no means satisfied with those terms, which place with the foreign Powers exclusively the decision as to when the conditions are met, but with the capital, Peking, occupied by foreign troops they had to submit.

On the declaration of war by China on Germany on August 14, 1917, all treaties between those two countries were abrogated and the German exterritorial status was abolished. By a Presidential Mandate of that date provisional regulations for the

trial of civil and criminal cases of enemy subjects were promulgated. The abolition of German exterritorial status was formally confirmed by a Sino-German agreement signed on May 20, 1921.

In 1917 China declared war on Austria and terminated her treaties with that country. By Article CXIII of the Treaty of St. Germain Austria formally renounced her exterritorial status in China, and Article IV of the Sino-Austrian treaty of October 19, 1925, provides that nationals of the two countries shall be "amenable in criminal and civil cases to the jurisdiction of the country where they reside."

On September 23, 1920, the President of China issued a Mandate declaring the "suspension of the recognition of the Russian minister and consuls in China", and on October 22 of that year the Chinese Minister for Foreign Affairs notified the Diplomatic Corps at Peking of the termination of Russian consular jurisdiction (exterritoriality) in China. By Article XII of the Sino-Russian agreement of May 31, 1924, the Soviet Government engaged to end its exterritorial status in China.

At the Paris Peace Conference, in 1919, the Chinese delegation strove without success to get a definite declaration regarding the termination of exterritoriality, and presented a statement to the Conference in the following terms:

(i) Historical background of extraterritoriality in China.

(ii) Promises made by the Powers to relinquish their extraterritorial rights.

(iii) Signs of progress in law and in the administration of justice in China.

1. Adoption of a National Constitution.
2. Preparation of the Civil, Criminal, and Commercial Codes, and the Codes of Civil and Criminal Procedure.
3. Establishment of new courts.
4. Improvements in legal procedure.
5. Careful training of judicial officers.
6. Reform of prison and police systems.

(iv) Defects of the system of extraterritoriality.

1. Diversity of laws applied.
2. Lack of effective control over witnesses or plaintiffs of another nationality.
3. Difficulty in obtaining evidence when a foreigner commits a crime in the interior.
4. Conflict of consular and judicial functions.

(v) Request made by China that the system of extraterritoriality be terminated at the expiration of a definite period and upon the fulfilment of the following conditions.

1. Promulgation of a Criminal, a Civil, and a Commercial Code, a Code of Civil Procedure and a Code of Criminal Procedure.
2. Establishment of new courts in all the localities where foreigners reside.

(vi) In the meantime, China asked the Powers

1. to submit every mixed case where the defendant is a Chinese to Chinese courts without interference on the part of the foreigners;
2. to allow the execution of warrants issued or judgments delivered by Chinese courts within the precincts of any foreign building without any previous examination by any consular or foreign judicial officer.

(vii) Abolition would be of benefit to foreigners as well.

China was refused a hearing at Paris, the Powers deciding that exterritoriality did not come within the scope of the Peace Conference.

Undaunted by their rebuff at Paris, the Chinese Government renewed the effort to end exterritoriality at the Conference on Limitation of Armament held at Washington, U. S. A., at the end of 1921 and early in 1922. Dr. W. W. Willoughby, professor of political science at Johns Hopkins University and formerly an adviser of the Chinese Government, stated, "it is a remarkable fact that, with the exception of a part of one session which was devoted to the situation in Siberia, the entire work of the Conference at Washington, in so far as it dealt with political questions in the Pacific and Far East, was concerned with the affairs of China." Dr. Wang Chung-hui, a member of the Chinese delegation, presented China's position on November 25.*

Extraterritoriality in China, said Dr. Wang, dated back almost to the beginning of China's treaty relations with foreign countries. It was clearly laid down in the treaty of 1844, between the United States and China, and similar provisions had since been inserted in treaties with other powers.

These extraterritorial rights were granted at a time when there were only five treaty ports—that is, places where foreigners could trade and reside. Now there are fifty such places and an equal number of places open to foreign trade on China's initiative. This meant an ever-increasing number of persons within China's territory over whom she was almost powerless. This anomalous condition had become a serious problem with which local administration was confronted; and if the impairment of the terri-

*U. S. Senate Document No. 126, 67th Congress, 2nd session, pp 475 ff, as quoted and paraphrased in "China At The Conference" by W. W. Willoughby.

torial and administrative integrity of China was not to be continued, the matter demanded immediate solution.

Dr. Wang said that he would point out some of the serious objections to the extraterritorial system:

(a) In the first place, it is in derogation of China's sovereign rights, and is regarded by the Chinese people as a national humiliation.

(b) There is a multiplicity of courts in one and the same locality, and the interrelation of such courts has given rise to a legal situation perplexing both to the trained lawyer and to the layman.

(c) Disadvantages arise from the uncertainty of the law. The general rule is, that the law to be applied in a given case is the law of the defendant's nationality, and so, in a commercial transaction between, say X and Y of different nationalities, the rights and liabilities of the parties vary according as to whether X sued Y first, or Y sued X first.

(d) When causes of action, civil or criminal, arise in which foreigners are defendants, it is necessary for adjudication that they should be carried to the nearest consular court, which may be many miles away; and so it often happens that it is practically impossible to obtain the attendance of the necessary witnesses, or to produce other necessary evidence.

(e) Finally, it is a further disadvantage to the Chinese that foreigners in China, under cover of extraterritoriality, claim immunity from local taxes and excises which the Chinese themselves are required to pay. Sir Robert Hart, who worked and lived in China for many years, had said in his book, "These from the Land of Sinim": "The extraterritoriality stipulation may have relieved the native official of some troublesome duties, but it has always been felt to be offensive and humiliating, and has ever a disintegrating effect, leading the people, on the one hand, to despise their own Government and officials, and, on the other, to envy and dislike the foreigner withdrawn from native control."

Until the system is abolished or substantially modified, Dr. Wang continued, it would be inexpedient for China to open her entire territory to foreign trade and commerce. The evils of the existing system had been so obvious that Great Britain in 1902, Japan and the United States in 1903, and Sweden in

1908 agreed, subject to certain conditions, to relinquish their extraterritorial rights. Twenty years had elapsed since the conclusion of these treaties, and while it is a matter of opinion as to whether or not the state of China's laws has attained the standard to which she is expected to conform, it is impossible to deny that she has made great progress on the path of legal reform. A few facts would suffice for the present. A law codification mission for the compilation and revision of laws has been sitting since 1904. Five codes have been prepared, some of which have already been put into force: (a) The Civil Code, still in course of revision; (b) the Criminal Code, in force since 1912; (c) the Code of Civil Procedure, and (d) the Code of Criminal Procedure, both of which have just been promulgated; and (e) the Commercial Code, part of which has been put into force.

These codes, Dr. Wang said, have been prepared with the assistance of foreign experts, and are based on the principles of modern jurisprudence. Among the numerous supplementary laws especial mention might be made of a law of 1918, called "Rules for the Application of Foreign Laws," which deals with matters relating to private international law. Under these rules, foreign laws is given ample application. Then there is a new system of law courts established in 1910. The judges are all modern, trained lawyers, and no one can be appointed a judge unless he has attained the requisite legal training. These are some of the reforms which have been carried out in China.

Dr. Wang declared that the China of to-day was not the China of 20 years ago, when Great Britain encouraged her to reform her judicial system, and, a fortiori, she is not the China of 80 years ago, when extraterritorial rights were first granted to the treaty powers. Dr. Wang said he had made these observations, not for the purpose of asking for an immediate and complete abolition of extraterritoriality, but for the purpose of inviting the powers to cooperate with China in taking initial steps toward improving and eventually abolishing the existing system, which is admitted on all hands to be unsatisfactory both to foreigners and Chinese. It is gratifying to learn of the sympathetic attitude of the powers toward this question, as expressed by the various delegations at a previous meeting of this committee.

In concluding, Dr. Wang asked, in the name of the Chinese delegation, that the powers now represented to this conference agree to relinquish their extraterritorial rights in China at the end of a definite period. In the meanwhile, he proposed that the above-mentioned powers should, at a date to be agreed upon, designate representatives to enter into negotiations with China for the adoption of a plan for a progressive modification and ultimate abolition of the system of extraterritoriality in China, the carrying out of which plan was to be distributed over the above-mentioned period.

The chairman, Secretary Hughes, said that certain treaties had been referred to by Dr. Wang. In order to bring these concretely before the delegates, he would like to read from the Treaty of 1903 between the United States and China:

"ART. XV.—Reform of judicial system—Extraterritoriality to terminate.—The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that of western nations, the United States agrees to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in so doing."

He understood that substantially the same statement was found in the other treaties with Great Britain in 1902 and with Japan in 1903. So far as the Government of the United States is concerned, it had already formulated an expression of its desire to give all possible assistance to China's project for reform, and he had no doubt that the other powers were equally in favor of furthering a more complete juridical integrity for China. The question, however, is one of treaty right—of fact, rather than of principle, for the principle had already been defined by the three Governments referred to by Dr. Wang. What is the state of the administration of justice in China? What are the laws? And how were they administered? The chairman said that extraterritoriality was designed for the protection of certain juridical rights, and though he agreed that the extraterritorial machinery left much to be desired, he felt that in determining what could be done to assist China in this matter, a very definite notion must be had of the administration of justice in that country before existing treaty rights should be abolished. Whatever steps were taken, they should be preceded by an inquiry into existing conditions, and this would be, as a matter of fact,

a very difficult problem to deal with. The chairman repeated that some nations had already formulated an expression of principle; it is now a question of finding the best way of aiding China when she is ready.

Dr. Wang said that China was ready to give every facility to the Powers for ascertaining what her laws are and how they are administered.

On December 10, 1921, the Conference adopted the following Resolutions:

The representatives of the Powers hereinafter named, participating in the discussion of Pacific and Far Eastern questions in the Conference on the Limitation of Armament—to wit, the United States of America, Belgium, the British Empire, France, Italy, Japan, the Netherlands and Portugal—

Having taken note of the fact that in the Treaty between Great Britain and China dated September 5, 1902, in the Treaty between the United States of America and China dated October 8, 1903, and in the Treaty between Japan and China dated October 8, 1903, these several Powers have agreed to give every assistance towards the attainment by the Chinese Government of its expressed desire to reform its judicial system and to bring it into accord with that of Western nations, and have declared that they are also "prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant" them in so doing;

Being sympathetically disposed towards furthering in this regard the aspiration to which the Chinese Delegation gave expression on November 16, 1921, to the effect that "immediately, or as soon as circumstances will permit, existing limitations upon China's political, jurisdictional and administrataive freedom of action are to be removed";

Considering that any determination in regard to such action as might be appropriate to this end must depend upon the ascertainment and appreciation of complicated states of fact in regard to the laws and the judicial system and the methods of judicial administration of China, which this Conference is not in a position to determine;

Have resolved—

That the Governments of the Powers above named shall establish a Commission (to which each of such Governments shall appoint one member) to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the Governments of the several Powers above named their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China, and to assist and further the efforts of the Chinese Government to effect such legislation and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality;

That the Commission herein contemplated shall be constituted within three months after the adjournment of the Conference in accordance with detailed arrangements to be hereafter agreed upon by the Governments of the Powers above named, and shall be instructed to submit its report and recommendations within one year after the first meeting of the commission;

That each of the Powers above named shall be deemed free to accept or to reject all or any portion of the recommendations of the Commission herein contemplated, but that in no case shall any of the said Powers make its acceptance of all or any portion of such recommendations either directly or indirectly dependent on the granting by China of any special concession, favor, benefit, or immunity, whether political or economic.

That the non-signatory Powers having by treaty extraterritorial rights in China may accede to the resolution affecting extraterritoriality and the administration of justice in China by depositing within three months after the adjournment of the Conference a written notice of accession with the Government of the United States for communication by it to each of the signatory Powers.

That China, having taken note of the resolutions affecting the establishment of a Commission to investigate and report upon extraterritoriality and the administration of justice in China, expresses its satisfaction with the sympathetic disposition of the Powers hereinbefore named in regard to the aspiration of the Chinese Government to secure the abolition of extraterritoriality

in China, and declares its intention to appoint a representative who shall have the right to sit as a member of the said Commission, it being understood that China shall be deemed free to accept or to reject any or all of the recommendations of the Commission. Furthermore, China is prepared to cooperate in the work of this Commission and to afford to it every possible facility for the successful accomplishment of its tasks.

FAILURE OF NEGOTIATIONS

THE EXTERRITORIAL COMMISSION
ADVANCE OF CHINESE NATIONALISM
"SEPARATIST" DIPLOMACY OF CHINA
CHINA VS. THE GREAT POWERS
DIPLOMATIC EXCHANGES, 1927 TO 1929
EXTERRITORIALITY ABOLISHED IN PRINCIPLE
CHINA AND THE WORLD SITUATION
BREAKDOWN OF NEGOTIATIONS
DOCTRINE OF REBUS SIC STANTIBUS
CHINA'S OPPORTUNITY

FAILURE OF NEGOTIATIONS

I.

THERE is a widespread disposition among foreigners living in China and with critics in foreign countries to accuse the Chinese Government of acting illegally, hastily, abruptly and inconsiderately in unilaterally declaring exterritoriality to be ended on a specified date. The truth is that after the resolutions of the Powers at Washington, previously noted, the Chinese tried for ten years to obtain the abolition of exterritoriality by friendly negotiation. In view of the possible consequences it is worth while to examine the course of those negotiations, the attitudes of the Powers, the causes of the breakdown of negotiations, and the reasons why the Chinese would no longer wait on the convenience of foreign governments. While note will be made of outstanding events that influenced those affairs, the record will be made up largely of documentary matter dealing with stages of the negotiations that led into the impasse and brought on China's action.

II.

The Exterrioriality Commission. The Powers agreed at Washington to send commissioners to China to investigate and report on conditions affecting the abolition of exterritoriality, but it was not until 1926,

five years later, that a commission was organized. In June, 1926, before their report was published, I discussed the matter in my newspaper correspondence (The New York Times), as follows:

"Action of the Powers about exterritoriality will be determined, I believe, by political expediency rather than by abstract justice. Political psychology on the Chinese side of this question is but little less confused than that of some foreigners. Restraining a strong nationalist desire to be rid of exterritoriality are a latent doubt among Chinese of China's readiness for the change, fears of certain Chinese vested interests and enterprises about the effects of a change, and an innate Chinese preference for the adjustment of everything by compromise. The Young China party (so to describe the rising generation of Chinese politicians without regard to their present actual party affiliations), however, cares little about what the foreign exterritorial commissioners will report. They stand on the position taken at Washington by the Chinese delegation and embodied in the proceedings of that conference, to the effect that China does not recognize the right of foreign governments to decide this question and will not necessarily be bound by findings of any foreign commission. I believe that advanced Chinese nationalists, and especially the radical elements, are hoping that reports of the exterritorial commissioners will be adverse to China. They are convinced that China's best chance to get rid of exterritoriality is to follow the example of Turkey

and abolish it by unilateral action. While Chinese political thinkers, except the communists, feel that China is not ready to take unilateral action, they hope conditions will make it feasible in a few years. Meanwhile they would prefer to have the Powers pursue a policy that will continue to feed the rising nationalism by keeping China, as they say, 'in chains'. They believe that a sympathetic and favorable report of the commissioners would mollify the Chinese and incline them to accept compromises and thus tend to prolong exterritoriality here."

And previous to that in 1925, I wrote:

"At Washington in 1921 and 1922 the Powers and China agreed on a general method for the abolition of exterritoriality. It contemplated a gradual process. The Powers were to send commissioners to China to study conditions and report. (It will be noted that the foreign Powers, and not China, retained control and supervision even of the approaches to abolition.) Then, with the presumed consent of China, a plan would be adopted and put into effect. It was then assumed that twenty or thirty years would be required to complete the shift.

"The course mapped out at Washington will not content Chinese nationalists now. New China wants to abolish exterritoriality without further delay. Its leaders are still willing to do that decently and in order by talking things over with the foreign governments and trying to meet their views in some ways.

But it must be China that decides what is done. Furthermore it is an error to assume that this idea of New China runs contrary to the maturer opinion of Chinese. In so far as I am able to sound it, mature Chinese opinion is entirely in sympathy with Young China on broad grounds. It might, however, be willing to take a more moderate course. That depends on whether action by the Powers quickly catches up with events and gets in touch with Chinese moderate thought before it is swung over completely to the radical program.

"Many times in the last twenty years I have discussed with able men the question of exterritoriality and the means of eventually ending it in China. It is a subject that at one time or another has occupied the minds of statesmen and philosophers who have studied that old nation and who have come into direct contact with it. I recall that more than ten years ago (about 1914) Charles Denby (son of that Charles Denby who was once American minister to China), who served with his father in the legation at Peking, later as American consul general at Shanghai, and at times acted as magistrate on special mixed courts in China, prepared a plan for a gradual termination of exterritoriality, which he allowed me to read. I remember its outlines. Briefly it was, first, to codify the laws of China with the help of foreign lawyers, to create a college of law in China with some foreign professors and lecturers, then to create a number of special courts on which both foreign and Chinese

judges would sit and where cases involving foreigners would be tried. I talked in later years about Mr. Denby's plan with many Chinese, particularly with Dr. Wang Chung-hui,* sometime Chief Justice of China, Minister of Justice, and a Justice of the International Court at The Hague. Those Chinese then found little to object to in the broader aspects of the plan. Foreigners in China have an idea now that there is danger of exterritoriality being given up suddenly and that such action would have disastrous effects both on foreigners and on Chinese. The likelihood of a sudden ending of exterritoriality lies in a failure or refusal of the Powers to do anything to meet modern Chinese opinion.....From talks I have had with eminent Chinese I think that the Chinese on their own motion before very long (they would have done it already but for the World War and the internal turmoil) will adopt a formula some-

* Wang Chung-hui. Born at Cotton 1882; educated at Peiyang University, Tientsin, and later studied political affairs in Japan; went to America for higher education; received D. C. L. from Yale in 1904; while in America translated the German Civil Code and acted as co-editor of the Journal of the American Bar Association; studied jurisprudence and international law in England, France and Germany; became a barrister of the Inner Temple of the English Bar; delegate to the Second Hague Peace Conference; Minister for Foreign Affairs in the First Revolutionary Government at Nanking in 1911; Minister of Justice in the first republican government of China; president of the Law Codification Commission, Peking, 1917; Chief Justice of the Supreme Court, 1920; chief Chinese delegate to the League of Nations, 1921; Chinese delegate to the Washington conference, 1921-22; elected deputy judge of the Permanent Court of International Justice at the Hague, 1921; Minister of Justice, Peking, 1922; acting Premier, 1922, and concurrently Minister of Education; assumed post as judge of the International Court, 1923; delegate at the customs tariff revision conference at Peking, 1925; chairman of the Commission for the investigation of exterritoriality in China, 1925; Minister of Education, Peking, 1926; became Minister of Justice in the National Chinese Government at Nanking, 1927-28; president of the Judicial Yuan, 1928, to the present.

thing like Mr. Denby's plan.....If foreign judges and legal counsellors are not thrust upon China (as foreign advisers in the past have been forced on oriental states) the Chinese may willingly employ them of their own motion. Beyond doubt Chinese thought on this subject of juridical practice has been deeply influenced by the foreign courts in China and by all foreign activities here. 'The white man's justice' has left its mark, which never will be rubbed out. But that is not to say, as many foreigners do, that rightly the white man's justice should be forced on the Chinese, even though it may from the viewpoint of the West be better for the Chinese. If not too much bullied and interfered with, and if the transition from old China's custom and tradition is not given a complexion of being forced on the Chinese against their will, they probably will fall into step with the remainder of the modern world and as rapidly as they can will apply here the forms of western justice and the tenets of international law."

That was a view of the situation as it appeared in 1925 and 1926. It seems now almost prophetic.

The situation as described in 1925 had changed somewhat by the time the foreign commissioners to investigate conditions relating to exterritoriality met at Peking in January, 1926. Chinese nationalism evidently was moving toward positive action. But Chinese still were willing to discuss the question in a friendly way and to give the foreign commissioners every facility in their investigations. Those foreign

commissioners, as was expected, found that the new Chinese legal codes were not yet fully promulgated, that in effect the old laws and customs still constituted the juridical practice of the country, that the courts did not conform with accepted western standards, that prisons were deplorable from a western viewpoint; and recommendations were made accordingly. The foreign commissioners thought it inadvisable for the Powers to end exterritoriality until conditions were improved. Part IV of the report, containing the recommendations of the commissioners, follows:

The commissioners, having completed their investigations and having made their findings of fact as set forth in Parts I, II and III of this report, now make the following recommendations.

The commissioners are of the opinion that, when these recommendations shall have been reasonably complied with, the several Powers would be justified in relinquishing their respective rights of exterritoriality.

It is understood that, upon the relinquishment of exterritoriality, the nationals of the Powers concerned will enjoy freedom of residence and trade and civil rights in all parts of China in accordance with the general practice in intercourse among nations and upon a fair and equitable basis.

RECOMMENDATIONS

A

The administration of justice with respect to the civilian population in China must be entrusted to a judiciacy which shall be effectively protected against any unwarranted interference by the executive of other branches of the Government, whether civil or military.

B

The Chinese Government should adopt the following program for the improvement of existing legal, judicial, and prison systems in China.

1. It should consider Parts II and III of this report relating to the laws and to the judicial, police, and prison systems, with a view to making such amendments and taking such action as may be necessary to meet the observations there made.

2. It should complete and put into force the following laws:

(1) Civil code.

(2) Commercial code (including negotiable instruments law, maritime law, and insurance law).

(3) Revised criminal code.

(4) Banking law.

(5) Bankruptcy law.

(6) Patent law.

(7) Land expropriation law.

(8) Law concerning notaries public.

3. It should establish and maintain a uniform system for the regular enactment, promulgation, and recession of laws, so that there may be no uncertainty as to the laws of China.

4. It should extend the system of modern courts, modern prisons, and modern detention-houses with a view to the elimination of the magistrates' courts and of the old-style prisons and detention-houses.

5. It should make adequate financial provision for the maintenance of courts, detention-houses, and prisons and their personnel.

C

It is suggested that, prior to the reasonable compliance with all the recommendations above mentioned but after the principal items thereof have been carried out, the Powers concerned, if so desired by the Chinese Government, might consider the abolition of exterritoriality according to such progressive scheme (whether geographical, partial, or otherwise) as may be agreed upon.

D

Pending the abolition of exterritoriality, the Governments of the Powers concerned should consider Part I of this report with a view to meeting the observations there made and, with the cooperation of the Chinese Government wherever necessary,

should make certain modifications in the existing systems and practice of exterritoriality as follows:

1. *Application of Chinese laws.*

The Powers concerned should administer, so far as practicable, in their exterritorial or consular courts such laws and regulations of China as they may deem proper to adopt.

2. *Mixed cause and mixed courts.*

As a general rule mixed cases between nationals of the Powers concerned as plaintiffs and persons under Chinese jurisdiction as defendants should be tried before the modern Chinese courts without the presence of a foreign assessor to watch the proceedings or otherwise participate. With regard to the existing special mixed courts, their organization and procedure should, as far as special conditions in the settlements and concessions warrant, be brought more into accord with the organization and procedure of the modern Chinese judicial system. Lawyers who are nationals of exterritorial Powers and who are qualified to appear before the exterritorial and consular courts should be permitted, subject to the laws and regulations governing Chinese lawyers, to represent clients, foreign or Chinese, in all mixed cases. No examination should be required as a qualification for practice in such cases.

3. *Nationals of exterritorial Powers.*

(a) The exterritorial Powers should correct certain abuses which have arisen through the extension of foreign protection to Chinese as well as to business and shipping interests the actual ownership of which is wholly or mainly Chinese.

(b) The exterritorial Powers which do not now require compulsory periodical registration of their nationals in China should make provision for such registration at definite intervals.

4. *Judicial assistance.*

Necessary arrangements should be made in regard to judicial assistance (including *commissions rogatoires*) between the Chinese authorities of the exterritorial Powers themselves, e.g.:

(a) All agreements between foreigners and persons under Chinese jurisdiction which provide for the settlement of civil matters by arbitration should be recognized, and the awards made in pursuance thereof should be enforced, by the exterri-

torial and consular courts in the case of persons under their jurisdiction, except when in the opinion of the competent court, the decision is contrary to public order and good morals.

(b) Satisfactory arrangements should be made between the Chinese Government and the Powers concerned for the prompt execution of judgments, summonses and warrants of arrest or search, concerning persons under Chinese jurisdiction, duly issued by the Chinese courts and certified by the competent Chinese authorities and vice versa.

5. *Taxation.*

Pending the abolition of exterritoriality, the nationals of the Powers concerned should be required to pay such taxes as may be prescribed in laws and regulations duly promulgated by the competent authorities of the Chinese Government and recognized by the Powers concerned as applicable to their nationals.

Signed in the City of Peking, September 16, 1926.

That part of the report was signed by Dr. Wang Chung-hui, the Chinese chief commissioner, who, however, appended to his signature a statement that his approval of all the statements in Parts I, II, and III was not to be inferred.

III.

The Advance of Chinese Nationalism. The incident of May 30, 1925, when foreign police at Shanghai fired into a crowd of Chinese student demonstrators and killed a number of them gave a tremendous stimulus to the rising tide of Chinese nationalism.

Early in the year 1927 the armies of the China Nationalist Party, or Kuomintang, which had been in control of Canton and southern China for some years, advanced northward and occupied Hankow, Nanking,

Shanghai and the Yangtzs river valley over most of its length. Hankow was the first important central China city that was taken, and the Nationalist capital was moved there from Canton.

It appeared almost immediately that the Nationalists intended to be aggressive in moves to end foreign special privilege and status in China. Eugene Chen, then Minister for Foreign Affairs of the Nationalist regime, succeeded in procuring a recession of the British residential area at Hankow. That was soon followed by retrocession of British areas at Kiukiang and other interior ports.

After Nanking was taken by the Nationalists the capital was moved there, where it has remained.

The year that followed the advent of the Nationalists in the Yangtze valley was marked by a struggle between the radical elements of the party and the more moderate elements, which resulted in the radicals losing power. Some of them were expelled from the party and compelled to leave China. The year 1927 saw a subsidence of Russian influence in the Chinese Nationalist movement: the Russian advisers were dismissed, formal diplomatic relations with Russia were broken off and the Russian consulates and embassy in China were closed. They have not been reopened, although from practical necessity diplomatic negotiations between China and Russia are carried on.

In 1928 the Nationalist armies advanced northward and occupied Peking, changed the name of that city

to Peiping and demoted it to the rank of provincial capital.

While it is likely that a struggle for control of the party would in any case have occurred between the moderate and radical elements of Kuomintang, that divergence was accentuated and hastened by attacks on foreigners at the time the Nationalist troops occupied Nanking, when several foreigners were killed, others were severely harrassed and injured, and foreign property was damaged. The more intelligent Chinese (with few exceptions) were shocked and alarmed by those wanton attacks on friendly foreigners and by the dangerous tendency it displayed. Much of the internal trouble in China since that time is traceable to the moderate-radical schism. The deposed radicals continue to plot to regain control of the government and with that in view they at times ally themselves with intransigent military leaders and politicians who for diverse reasons are hostile to the present Nanking regime. The rise of Communism and the depredations of so called Communist armies, which in the last three years have slain more than 300,000 people in a single province and have looted many towns and cities, has a plain relation to the moderate-radical split in Kuomintang that occurred in 1927.

Notwithstanding those serious internal dissensions and the wars occasioned by them, which kept the Nanking regime almost continuously in difficulties

that might wreck any government, it did not relax its efforts to terminate exterritoriality. On this issue the Chinese moderates and radicals agree in principle. They dissent only as to means and method.

IV.

"Separatist" Treatment of Exterritoriality. The appointment of Dr. C. T. Wang (Wang Cheng-ting)* as Minister for Foreign Affairs of the Nationalist Government in June, 1928, marked a new and possibly a final period of exterritoriality in China. While every government the country has had since 1900, and every Minister for Foreign Affairs, have at all suitable occasions made representations and protests against the existence of that system, it remained for C. T. Wang to introduce a new diplomatic method of dealing with the question which can be called the "separatist" treatment.

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* C. T. Wang, LL. D., was born at Ningpo in 1882. Educated in provincial schools, Pei-Yang Universaity at Tientsin, in Japan for special study, at University of Michigan 1907-08, Yale 1908-11, where he obtained an A. B. degree; Phi Beta Kappa; returned to China in 1911 and became secretary of the Chinese Y. M. C. A.; actively associated with the revolution in 1911; Vice Minister of Industry and Commerce in the first Republican Government at Peking; Vice President of the Senate; when the Parliament was dissolved by Yuan Shih K'ai he went to Canton and affiliated with the Southern Government, which sent him to Washington in 1918 to try and secure recognition of its belligerency; member of the Chinese delegation at the Paris peace Conference: negotiated the treaty with Japan for retrocession of Shantung; Minister of Foreign Affairs in the Peking Government in 1922: Acting Premier at Peking in 1923; negotiated preliminary agreement with Russia in 1924; concurrently Minister of Foreign Affairs and Minister of Finance, Peking Government, in 1926; chairman of the International Customs Conference at Peking in 1926; appointed Minister of Foreign Affairs in the Nanking Government in June, 1928; member of Central Executive Committee of Kuomintang; member of Central Political Council of Kuomintang.

For many years prior to the assumption by C. T. Wang of the position of Minister for Foreign Affairs in the National Government at Nanking it had been the practice of Chinese Governments and diplomats to deal with the foreign Powers as a solidarity, or bloc. That practice probably originated in the Protocol of 1901, by which the Powers formed a certain unity in dealing with China. Out of that Protocol grew the method of dealing, on occasions, with the Chinese Government (then established at Peking) through the Diplomatic Corps, comprising the ministers of all legations of the Powers at Peking. Communications would be addressed to the Chinese Government by the Diplomatic Corps when it was thought necessary to impress the Chinese particularly. That method at times served to give an impression that if the Chinese Government failed to heed the admonitions and protests of the Powers they would act in unison to enforce their position, and it was effective. In recent years the influence of that method with the Chinese became weaker and sometimes they disregarded representations of the Diplomatic Corps.

After the Nationalists occupied Peking and announced that the capital would remain at Nanking an anomalous situation ensued. The legations of the Powers have stayed at Peiping, as the city is now named, while the Chinese Government that they recognize and to whom they are accredited is at Nanking, some eight hundred miles away, apart from the

psychological influence of the Legation Quarter, with its walled-off and garrisoned area, its special police administration, and its implication of the superior military power and diplomatic authority of the foreign nations. For some time (the fallacy of it apparently has not penetrated the personnel of some legations even yet) the Legation Quarter deceived itself with the idea that it was more important than the Government to whom the diplomats are accredited, and that if the diplomats refused to go to Nanking that Nanking would come to them. When the home governments of the Powers awoke to the situation and ordered their diplomatic representatives in China to establish closer relations with Nanking the process of undermining foreign diplomatic influence in China had gone past restoration by any of the former methods. The climax came when C. T. Wang declined to receive and reply to a communication of the Diplomatic Corps on the ground that the National Government of China does not recognize the existence of such a body. The Chinese Government recognizes and respects the diplomatic officials of all governments who are duly accredited to it, but it professes no knowledge of and wants to have no dealing with a foreign diplomatic bloc. The Nanking Foreign Ministry has taken the same position in regard to the foreign consular body at Shanghai. As insistence on a diplomatic bloc visavis China obviously may be very embarrassing to some of the principal Powers, the question has been quietly shelved. (Perhaps it should be mentioned that

some foreign diplomats in China have understood the new situation and foresaw its probable outcome and advised their governments to move their legations to Nanking.) As it is, those ministers who have business with the Chinese Government are compelled to travel to Nanking to transact it with any satisfaction. It is evident that Nanking will not go to the Legation Quarter. This is a phase of the policy of dealing with the foreign governments not as a bloc, but separately, and the out-of-date attitude of the Legation Quarter has stimulated and helped the Chinese in their moves to end exterritoriality. Recently a prominent American newspaper commented editorially to the effect that the Nanking Government was very anxious to induce the Powers to move their legations to Nanking and had offered sites for new legation buildings without cost. That statement is incorrect. The Chinese have been astute enough to perceive that by staying at Peiping the legations would steadily lower their influence and ultimately destroy whatever unity had existed among them. In the first year or two of the Nanking regime some members of the Chinese Government were anxious to have the foreign legations come to Nanking, with the idea that such a move would enhance the prestige of the Government. That concept is discredited now. It is a matter of comparative indifference to the Government of China where the foreign diplomats live; the diplomats inconvenience only themselves by remoteness from the capital, and weaken only their own position by lack

of contact with and understanding of the government to whom they are accredited.

A primary device of China's separatist diplomacy regarding exterritoriality was to divide the foreign Powers into two classes; the principal or actual Powers, and weaker nations without any real power to shape events in the Far East. For some years—I have frequently emphasized this in my writings—it has been evident that the real Powers in the Far East are few. In a military sense they number but four: the United States of America, Japan, Russia, Great Britain. France has territorial possessions in Eastern Asia, but her military power cannot be applied effectively in that region unless the French navy is built up to equality with or superiority to the navies of the United States, Great Britain and Japan. But theoretically France is ranked, in respect to China, as a principal Power because of the residential concessions administered by her in that country. The military power, actual and potential, of Russia in Asia is recognized; but Russia hardly enters into calculations regarding exterritoriality because that status was given up by Russia some years ago.

A survey of exterritorial status in China when C. T. Wang began a separatist diplomacy designed to end it showed that about 300,000 foreigners were living in China. Of those persons close to 75,000 already were without exterritorial status, being principally Russians and Germans, with a scattering of Austrians and subjects of non-treaty countries. Of the slightly

more than 200,000 Japanese listed, about 160,000 were Koreans. Almost all of the Koreans who live in China are in Manchuria, and a vast majority of them emigrated to escape Japanese rule when Japan occupied and then annexed Korea. The Japanese Government, however, would not let its unwilling Korean subjects escape so easily, and applied to them a law by which Japanese who emigrate to other countries remain subjects of the Mikado. For some time the Japanese Government tried to apply that law to Japanese living in territories of the United States, but found it unenforceable there. In Manchuria Japan's position since the Russo-Japan war has been such that Chinese authorities have felt unable to prevent the Tokyo government from taking control over the Korean emigres, although thousands of them had taken steps to become naturalized Chinese and thousands more wanted to obtain that status. It hardly will be contended that the western Powers are warranted in clinging to exterritoriality for the benefit of Asiatics who never have lived under a western legal system, so the Koreans may be discarded from the discussion. Excluding Koreans, it appears that in 1928 some 75,000 white foreigners were living in China without exterritoriality, and about 21,000 white foreigners and 43,000 Japanese and other Orientals were living there with exterritorial status. Of all classes of foreigners, white and Asiatic, more were living under the jurisdiction of China than those who had exterritorial jurisdiction. Of white people, in-

cluding Eurasians so classified, living in China, only about 22 per cent. had exterritorial status in 1928. Those figures indicate that when the Chinese Government commenced its "drive" to end exterritoriality the work already was partly done.

It hardly was to be expected that countries such as Sweden with 140 citizens in China, Spain with less than 300, Switzerland with 250, Mexico with 5, Brazil with 16, Denmark with 650, Finland with 40, Holland with 425, Czecho-Slovakia with 600, and Italy with 630 would make very strenuous objections to surrendering exterritoriality; moreover those nations are not in a position to maintain the status by intimidation or force. The status was accorded to those countries more as a courtesy than otherwise, in order to put all western people on the same basis.

In the years 1928, 1929 and 1930 the Chinese Foreign Office concluded new treaties in which exterritoriality was omitted, or was given up conditionally (the condition being that the new status would not go into effect until the abolition of exterritoriality became universal), with all but a few of the exterritorial governments. At the end of the year 1930 the Chinese Ministry for Foreign Affairs stated the position as follows:

EXTERRITORIALITY

(a) Calculated to the end of 1930, the nationals of nine treaty Powers were amenable to China's jurisdiction: namely, Soviet Russia, Germany, Austria, Mexico, Finland, Persia, Greece, Bolivia, and Czecho-Slovakia.

(b) Upon the Sino-Polish Treaty, concluded in September, 1929, coming into force, the nationals of Poland would become amenable to Chinese jurisdiction.

(c) In the case of Belgium, its nationals would be subject to Chinese jurisdiction as soon as a majority of the extra-territorial Powers had agreed to relinquish their extra-territorial rights.

(d) In regard to Italy, Spain, Portugal and Denmark, their nationals were similarly obligated as soon as all signatories of the Washington Treaty had acceded thereto.

(e) In the case of Sweden, Japan and Peru, negotiations were being conducted for the conclusion of new treaties to replace their time-expired predecessors.

(f) In the case of Switzerland, its nationals would be subject to Chinese jurisdiction when all the treaty Powers had relinquished their extraterritorial rights.

(g) The treaties with Great Britain, the United States, France, the Netherlands, Norway, and Brazil being still in force, the National Government had on its own accord declared the abolition of extraterritoriality as from January 1, 1930. Proposals concerning the detailed procedure for the execution thereof had been communicated to these Governments, and negotiations to this end were being conducted.

(h) An Agreement for the re-organization of the former Provisional Court in the Shanghai International Settlement was signed in February, 1930, consisting of ten articles and one exchange of notes, and came into force two months later, as a temporary arrangement pending the abolition of extra-territoriality.

CONCLUSION OF TREATIES OF EQUALITY.

(a) Under the category of those already consummated are the Sino-Japanese Tariff Agreement; the exchange of notes relating to the disposition of the British share of the Boxer Indemnity; the Treaty of Amity, Commerce and Navigation with Czecho-Slovakia; the Tariff Agreement with Holland; and the Treaty of Amity with Greece.

(b) Under the category of those already signed but not yet ratified: the Treaty of Arbitration with the United States;

the Convention with France concerning Indo-China and the Adjoining Chinese Provinces; and the Treaty of Amity and Commerce with Poland as well as its Protocol.

(c) Other new treaties could be grouped into three classes:

(1) On the point of being signed: Treaty of Commerce with Cuba; Treaty of Commerce with Peru; Treaty of Amity and Commerce with Turkey; and the Treaty of Emigration with Nicaragua.

(2) Under negotiation: Treaty of Commerce with Persia; Treaty of Commerce with Japan; Treaty of Commerce with Chile; Treaty of Commerce with Argentine; Treaty of Commerce with Panama; and the Cable Communications Agreement with Japan.

The Republic of San Domingo, Roumania, Latvia, Esthonia, Finland, Siam, and the Union of South Africa had indicated a desire to negotiate treaties with China, while the revision of the Sino-Dutch Commercial Treaty and Consular Convention was also under contemplation.

UNIVERSAL TREATIES.

In regard to the universal treaties to which China has become a party, the following four have been already ratified: Convention concerning the Creation of Minimum Wage Fixing Machinery; Universal Postal Convention; Protocol concerning the Revision of the Statute of the Permanent Court of International Justice; and the Protocol concerning the Accession of the United States of America to the Protocol of the Signature of the Permanent Court of International Justice.

The Slavery Convention and the International Sanitation Convention were in process of being ratified; the Convention on Certain Questions Relating to Conflict of Nationality Laws; Protocol relating to a Certain Case of Statelessness; and Special Protocol concerning Statelessness were in process of being signed;* and arrangements were being made for China to adhere to the International Convention for Safety of Life at Sea.

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* This convention and protocols were signed on December 20, 1930.

v.

China vs the Great Powers. When the Chinese Government instituted, in 1928, a vigorous diplomacy intended to bring about the abolition of exterritoriality Chinese diplomats understood perfectly that the real difficulties, if any were encountered, would be met in the attitudes and policies of the great Pacific Ocean Powers, namely, the United States of America, Japan, and Great Britain. Students of world politics, and especially of the politics of the Pacific Ocean and Eastern Asia, have perceived for some time that France cannot afford to take an intransigent course in that region, so, with Russia having given up exterritoriality, the crux narrowed to the three Powers previously mentioned. To narrow the situation still more, it is highly improbable that Great Britain will adopt a course toward China that is radically different from or antagonistic to the policy of the United States. If the American Government should give up exterritoriality it would be almost inconceivable that the British Government would cling to that status, and vice versa. If America and Great Britain should agree to end exterritoriality it would be exceedingly difficult, almost impossible, for Japan and France to hold out.

C. T. Wang took office as Chinese Minister for Foreign Affairs at a moment when Sino-Japan relations were strained. The aggressive policy of the Tanaka Cabinet toward China that led to the Tsinan incident, the assassination of Chang Tso-lin, and the

sending of several divisions of Japanese troops to Shantung and Manchuria, was then at its height. Nevertheless, on July 19, 1928, Dr. Wang notified Mr. Yoshizawa, the Japanese minister to China, that the Sino-Japan treaty of commerce and navigation of 1896 and the supplementary treaty of 1903 had expired in October, 1926; that the Chinese Government had repeatedly extended the time for negotiating a new treaty, the latest extension expiring on July 20, 1928; that in accordance with the Chinese Government's declaration of July 7, it was the intention of the Government to make a new treaty with Japan based on principles of equality and mutuality; and requesting that the Japanese Government would send a delegate to begin negotiations without further delay. In the meantime the Chinese Government promulgated a set of provisional regulations concerning Sino-Japan relations.

That brought on a diplomatic controversy when the Tokyo Foreign Office had the support of its military divisions in China, the power of intimidation that the situation carried, and the influence of an organized propaganda of the Japaness press favoring a "strong policy" toward China. China was in fact then invaded by foreign armies and beset with serious internal troubles. The Japanese Government advanced the argument that the treaty and supplement were still in force and must necessarily remain in full effect until a new treaty was made. By that theory any party to a treaty can make it perpetual by refusing

on one excuse or another to negotiate a new one. Several notes were exchanged without result, the Chinese Government at one time suggesting that the legal issue be submitted to the International Court at The Hague or to the League of Nations, of which both China and Japan are members; but Japan's unwillingness to submit questions of her relations with China to any European body blocked that proposal. For the time the issue remained in that position. Remembering its own efforts to throw off exterritoriality, the position in respect to that question taken by Japan at Geneva and Japan's relation to the Asiatic world, it was illogical and inexpedient for the Japanese Government to oppose in principle China's wish to end the status.

VI.

Diplomatic Exchanges, 1927 and 1929. The notes exchanged at different times, in the years 1927, 1928 and 1929 between the Chinese Government and the American and British governments indicate the progress, or lack of it, made toward ending exterritoriality. On January 26, 1927, the British Government made proposals to China as follows:

"(1) His Majesty's Government are prepared to recognize the modern Chinese Law Courts as competent Courts for cases brought by British plaintiffs or complainants, and to waive the right of attendance of a British representative at the hearing of such cases.

"(2) His Majesty's Government are prepared to recognize the validity of a reasonable Chinese Nationality Law.

"(3) His Majesty's Government are prepared to apply as far as practicable in the British Courts in China the modern Chinese Civil and Commercial Codes—apart from procedure Codes and those affecting personal status—and duly enacted subordinate legislation as and when such laws and regulations are promulgated and enforced in Chinese Courts and on Chinese citizens throughout China.

"(4) His Majesty's Government are prepared to make British subjects in China liable to pay such regular and legal Chinese taxation not involving discrimination against British subjects or British goods, as is in fact imposed on, and paid by, Chinese citizens throughout China.

"(5) His Majesty's Government are prepared, as soon as a revised Chinese Penal Code is promulgated and applied in Chinese Courts, to consider its application in British Courts in China.

"(6) His Majesty's Government are prepared to discuss and enter into arrangements according to particular circumstances at each port concerned for the modification of Municipal Administration of British Concessions, so as to bring them into line with the administrations of Special Chinese Administrations set up in former Concessions, or for their amalgamation with former Concessions now under Chinese control, or for the transfer of police control of Concession areas to the Chinese authorities.

"(7) His Majesty's Government are prepared to accept the principle that British missionaries should no longer claim the right to purchase land in the interior, that Chinese converts should look to Chinese Law and not to Treaties for protection, and that missionary, educational, and medical institutions will conform to Chinese Laws and regulations applying to similar Chinese institutions."

A Statement concerning the United States of America's policy in China, January 26, 1927, contained the following paragraph:

> "The United States is prepared to put into force the recommendations of the Exterritoriality Commission, which can be put into force without a treaty, at once and to negotiate the release of exterritorial rights as soon as China is prepared to provide protection by law and through her courts to American citizens, their rights and property."

On April 27, 1929, identic notes on the abolition of consular jurisdiction in China were communicated by the Chinese Government to the diplomatic representatives of the British, American, and French Governments, the text of which is as follows:

"I have the honour to recall to Your Excellency that the Chinese Government, through its representatives, had occasion to express at the Paris Peace Conference its strong desire for the removal of limitations on China's jurisdictional sovereignty imposed upon her by the old treaties concluded between China and the foreign Powers and that the Chinese Delegation emphatically reiterated the same desire at the Washington Conference, which placed itself on record its sympathetic disposition towards furthering the aspiration of China for the removal of restrictions on her political, jurisdictional and administrative freedom of action.

"With the unification of China and the establishment upon a firm foundation of the National Government, a new era has been happily inaugurated in the relations between our two countries through the conclusion of the recent Tariff Treaty, and it is to be confidently hoped that the material well-being of our two countries will henceforth be greatly enhanced. But it is the belief and the conviction of the Chinese Government that the promotion of such material well-being will be accelerated by a readjustment of the relations between our two countries on a basis of friendly equality in matters of jurisdiction, and if Your Excellency's Government could see their way to meet the wishes of the Chinese Government and people in this regard, it is certain that another obstacle to the full and frank co-operation, in trade or otherwise, between the Chinese people and foreign nationals in this country would be happily removed

and that the desire of the Chinese Government for promoting to the fullest extent the material interests of all who choose to associate themselves with our own people would find its early realization.

"It goes without saying that exterritoriality in China is a legacy of the old régime, which has not only ceased to be adaptable to the present-day conditions, but has become so detrimental to the smooth working of the judicial and administrative machinery of China that her progress as a member of the Family of Nations has been unnecessarily retarded. The inherent defects and inconveniences of the system of consular jurisdiction have been most clearly pointed out by the Chinese Government on various occasions and also by the jurists and publicists of other countries in their official utterances as well as in their academic discussions. It is a matter for sincere regret that, while many Governments which are playing an important rôle in international affairs are eager and persistent in their endeavour to promote genuine friendship and harmony among nations, such anachronistic practices as only tend to mar the friendly relations between the Chinese people and foreign nationals should be allowed to exist at a time when justice and equality are supposed to govern the relations of nations.

"With the close contact between China and the foreign Powers, the assimilation of western legal conceptions by Chinese jurists and the incorporation of western legal principles in Chinese jurisprudence have proceeded very rapidly. In addition to the numerous codes and laws now in force, the civil code and the commercial code have reached the final stage of preparation and will be ready for promulgation before January 1st, 1930. Courts and prisons, along modern lines, have been established, and are being established, throughout the whole country.

"Inasmuch as doubt has been entertained with regard to the advisability of relinquishing exterritorial privileges at this juncture by the interested Powers, it may be pointed out that certain countries, having ceased to enjoy exterritorial privileges in China, have found satisfaction in the protection given to their nationals by Chinese law and have had no cause for complaint that their interests have been in any way prejudiced. Your Excellency's Government may, therefore, rest assured that the legitimate rights and interests of your nationals will not be

unfavourably affected in the least by the relinquishment of the exception privilege which they now possess.

"As Your Excellency's Government have always maintained a friendly attitude towards China and have always shown their readiness in the adoption of measures for the removal of limitations on China's sovereignty, I am happy to express to Your Excellency, on behalf of the Chinese Government, the desire of China to have the restrictions on her jurisdictional sovereignty removed at the earliest possible date and confidently hope that Your Excellency's Government will take this desire of China into immediate and sympathetic consideration and favour me with an early reply so that steps may be taken to enable China, now unified and with a strong Central Government, to rightfully assume jurisdiction over all nationals within her domain.

"I avail myself of this opportunity to renew to your Excellency the assurance of my highest consideration."

On the same date three other notes to substantially the same effect were sent to the diplomatic representatives of the Dutch, Norwegian and Brazilian Governments.

Replies from the Powers.

American reply dated Aug. 10, 1929.

"I have the honor to acknowledge the receipt of the Chinese Government's note of April 27th in which there is expressed the desire that the United States should relinquish the further exercise of exterritorial jurisdiction over its citizens in China and the hope that the American Government will take this desire into immediate and sympathetic consideration.

"I am directed by my Government to state that it is prepared to give sympathetic consideration to the desires expressed by the Chinese Government, giving at the same time, as it must, due consideration to the responsibilities which rest upon the Government of the United States in connection with the problem of jurisdiction over the persons and property of American citizens in China. My Government has, in fact, for some time past, given constant and sympathetic consideration to the national aspirations of the people of China, and it has repeatedly given concrete evidence of its desire to promote the

realization of those aspirations in so far as action of the United States may contribute to that result. As long ago as the year 1903, in Article 15 of the treaty concluded in that year between the United States and China, the American Government agreed that it would be prepared to relinquish the jurisdiction which it exercised over its nationals in China 'when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in so doing.' As recently as last year, the American Government gave very definite evidence of its desire to promote the realization of China's aspirations by concluding with the Government of China, on July 25, 1928, a treaty by which the two countries agreed to the cancellation of provisions in earlier treaties whereby China's authority in reference to customs duties on goods imported into China by American nationals had been restricted.

"The exercise by the United States of jurisdiction over its citizens in China had its genesis in an early agreement that, because of differences between the customs of the two countries and peoples, and differences between their judicial systems, it would be wise to place upon the American Government the duty of extending to American nationals in China the restraints and the benefits of the system of jurisprudence to which they and their fellow nationals were accustomed in the United States.

"My Government deems it proper at this point to remind the Government of China that this system of American jurisdiction as administered by the exterritorial courts has never been extended by the United States beyond the purposes to which it was by the treaties originally limited. Those purposes were the lawful control and protection of the persons and property of American citizens who have established themselves in China in good faith in accordance with the terms of the treaties and with the knowledge and consent of China in the normal development of the commercial and cultural relations between the two countries. The United States has never sought to extend its sovereignty over any portion of the territory of China.

"Under the provisions of the treaty of 1844, and other agreements concluded thereafter which established that system, American citizens have lived and have carried on their legitimate enterprises in China with benefit both to the Chinese and to themselves. They have engaged extensively in cultural and

in commercial enterprises involving large sums of money and extensive properties, and, as your Government has so graciously indicated in the note under acknowledgment, there has grown up and existed between the peoples and the Governments of the two countries a friendship that has endured. The American Government believes that this condition of affairs has been due in large part to the manner in which the relations between the two peoples have been regulated under the provisions of these agreements, the existence of which has assured to the lives and property of American citizens in China the security so necessary to their growth and development.

"For the safety of life and property, the development and continuance of legitimate and beneficial business depend in the last resort, in China, as elsewhere, upon the certainty of protection from injury or confiscation by a system of known law consistently interpreted and faithfully enforced by an independent judiciary. Where such protection fails, the life and liberty of the individual become subject to the constant threat of unlawful attack, while his property suffers the ever-present danger of confiscation in whole or in part through arbitrary administrative action. To exchange an assured and tried system of administration of justice, under which it is acknowledged that life and property have been protected and commerce has grown and prospered, for uncertainties in the absence of an adequate body of law and of an experienced and independent judiciary would be fraught with danger in both of the foregoing respects.

"My Government has instructed me to say that the statement of the Minister of Foreign Affairs of China, telegraphed to the press of the United States on July 26th, to the effect that 'all foreign interests in China purely for legitimate purposes will be duly respected' has been noted by it with pleasure as indicating that the Government of China has not failed to appreciate the value to its foreign relations of the factors above mentioned. My Government bids me add that it is therefore persuaded that the Government of China will concur in its belief, based as it is upon the facts set forth in succeeding paragraphs, that the sudden abolition of the system of protection by its exterritorial courts in the face of conditions prevailing in China today would in effect expose the property of American citizens to danger of unlawful seizure and place in jeopardy the liberty of the persons of American citizens.

"The Chinese Government has, on several occasions during recent years, expressed the desire that the Powers relinquish the exercise of exterritorial jurisdiction over their citizens. In the note under acknowledgment reference is made to the position taken at the Washington Conference. It will be recalled that, in pursuance of the resolution adopted at that Conference, there was created a Commission to inquire into the present practice of exterritorial jurisdiction in China and into the laws and the judicial system and the methods of judicial administration of China, and that, under date of September 16, 1926, that Commission made its report. This report contained an account of the conditions then prevailing in the judicial system of China, as well as a number of recommendations carefully suggested as indicating the changes and improvements which would be necessary before there would be adequately developed a system of known law and an independent judiciary capable of justly controlling and protecting the lives and property of the citizens of foreign countries doing business in China. Your Government will recall that the Commission on Exterritoriality which made these recommendations was composed of representatives from thirteen countries including both China and the United States and that its recommendations thoughtfully and reasonably conceived were unanimously adopted and were signed by all of the Commissioners.

"Because of its friendship for the Chinese people and its desire, to which allusion has been already made, to relinquish as soon as possible exterritorial jurisdiction over its own citizens in China, my Government has followed with attentive consideration this entire subject, including particularly the progress which has been made in carrying out its recommendations since the rendition of this report. It fully appreciates the efforts which are being made in China to assimilate those western juridical principles to which your Government has referred in its note, but it would be lacking in sincerity and candor, as well as disregardful of its obligations towards its own nationals, if it did not frankly point out that the recommendations aforesaid have not been substantially carried out and that there does not exist in China to-day a system of independent Chinese courts free from extraneous influences which is capable of adequately doing justice between Chinese and foreign litigants. My Government believes that not until these recommendations are fulfilled in

far greater measure than is the case to-day will it be possible for American citizens safely to live and do business in China and for their property adequately to be protected without the intervention of the consular courts.

"In conclusion, my Government has directed me to state that it observes with attentive and sympathetic interest the changes which are taking place in China. Animated as it is by the most friendly motives and wishing as far as lies within Government power to be helpful, the American Government would be ready, if the suggestion should meet with the approval of the Chinese Government, to participate in negotiations which would have as their object the devising of a method for the gradual relinquishment of exterritorial rights, either as to designated territorial areas, or as to particular kinds of jurisdiction, or as to both, provided that such gradual relinquishment proceeds at the same time as steps are taken and improvements are achieved by the Chinese Government in the enactment and effective enforcement of laws based on modern concepts of jurisprudence.

"I avail myself of this opportunity to extend to Your Excellency the renewed assurance of my highest consideration."

British reply dated August 10, 1929.

"I have the honour to acknowledge the receipt of your Note of April 27th in which you inform me of the desire of the National Government of the Republic of China that the restrictions imposed on the jurisdictional sovereignty of China by the system of exterritoriality now in force should be removed at the earliest possible date with a view to the assumption of jurisdiction by China over all nationals in her domain.

"2. I have communicated the contents of your letter to my Government and I am now instructed to transmit to you a reply in the following sense:

"3. Animated by the friendly feelings which they have always entertained towards the Government and people of China, His Majesty's Government have given their sympathetic consideration to the request of the Chinese Government relating to the abolition of exterritorial jurisdiction in China. The high importance of this subject in its bearing both on the political development of China and the future relations between China and Great Britain appears to demand that it should be closely examined from every aspect. In particular a just appreciation

of the reasons for which and the manner in which the present system of exterritoriality came into existence seems essential to a consideration of the proper method for dealing with the problem.

"4. The system of exterritoriality in force in China has its root deep down in the past. For thousands of years before science had improved communications, the Chinese people were secluded from the rest of the world by deserts and the ocean and they developed a civilisation and a policy peculiar to themselves. A wide gulf was thus fixed between Europe and America on the one hand and China on the other.

"5. In particular the conception of international relations as being intercourse between equal and independent states—a conception which was woven into the very texture of the political ideas of the nations of the West—was entirely alien to Chinese modes of thought. When traders of the West first found their way to the coast of China, the Chinese Government found it difficult to allow them freely to enter into their country and mingle with their people nor did they recognise that the nations to which they belonged were the equals of China. These traders were therefore confined to a small section of a single city in one corner of the Empire and while on the one hand they were subjected to many disabilities and to grave humiliations, on the other hand, by a species of amorphous and unregulated exterritoriality, which was the natural outcome of these conditions, the responsibility of managing their own affairs and maintaining order amongst themselves was in some measure left to their own initiative.

"6. Relations continued for many years upon this insecure and unsatisfactory footing. Friction was often dangerously intense and conflicts not infrequently arose, generally out of demands that some innocent person should be surrendered for execution to expiate perhaps an accidental homicide or that foreign authority should assume the responsibility for enforcing the revenue laws of China.

"7. The object of the first treaties was to secure recognition by China of Great Britain's equality with herself and to define and regulate the exterritorial status of British subjects. Relations between the two countries having thus been placed on a footing of equality and mutual respect, Great Britain was content

that her nationals should continue to bear those responsibilities and to labour under those disabilities which respect for the sovereignty of China entailed upon them. Conditions did not permit the general opening of the interior of China and the residence of foreigners has consequently continued down to the present day to be restricted to a limited number of cities known as Treaty Ports.

"8. His Majesty's Government recognise the defects and inconveniences of the system of consular jurisdiction to which the Government of China have on various occasions drawn attention. In 1902 in Article 12 of the Treaty of Commerce between Great Britain and China signed in that year, His Majesty's Government stated their readiness to relinquish their exterritorial rights when they were satisfied that the state of Chinese laws, the arrangements for their administration and other considerations warranted them in so doing. They have since watched with appreciation the progress which China has made in the assimilation of western legal principles to which reference is made in your Note under reply and they have observed with deep interest the facts set out and recommendations made in the report of the commission on exterritoriality in the year 1926.

"9. More recently in the declaration which they published in December 1926 and the proposals which they made to the Chinese authorities in January 1927 His Majesty's Government have given concrete evidence of their desire to meet in a spirit of friendship and sympathy the legitimate aspirations of the Chinese people. They have already travelled some distance along the road marked out in those documents and they are willing to examine in collaboration with the Chinese Government the whole problem of exterritorial jurisdiction with a view to ascertaining what further steps in the same direction it may be possible to take at the present time.

"10. His Majesty's Government would however observe that the promulgation of codes embodying western legal principles represents only one portion of the task to be accomplished before it would be safe to abendon in their entirety the special arrangements which have hitherto regulated the residence of foreigners in China. In order that those reforms should become a living reality it appears to His Majesty's Government to be

necessary that western legal principles should be understood and be found acceptable bv the people at large no less than by their rulers and that the Courts which administer these laws should be free from interference and dictation at the hands not only of military chiefs but of groups and associations who either set up arbitrary and illegal tribunals of their own or attempt to use legal courts for the furtherance of political objects rather than for the administration of equal justice between Chinese and Chinese and between Chinese and foreigners. Not until these conditions are fulfilled in a far greater measure than appears to be the case today will it be practicable for British merchants to reside, trade and own property throughout the territories of China with the same equality of freedom and safety as these privileges are accorded to Chinese merchants in Great Britain. Any agreement purporting to accord such privileges to British merchants would remain for some time to come a mere paper agreement to which it would be impossive to give effect in practice. Any attempt prematurely to accord such privileges would not only be no benefit to British merchants but might involve the Government and people of China in political and economic difficulties.

"11. So long as these conditions subsist there appears to be no practicable alternative to maintaining though perhaps in a modified form the Treaty Port system that has served for nearly a century to regulate intercourse between China and British subjects within her domain. Some system of exterritoriality is the natural corollary for the maintenance of the Treaty Port system and the problem as it presents itself to His Majesty's Government at the present moment is to discover what further modifications in that system beyond those already made and alluded to above it would be desirable and practicable to effect.

"12. His Majesty's Government await further proposals from the National Government as to the procedure now to be adopted for examining this question and they instruct me to assure Your Excellency that they will continue to maintain towards any such proposals the same friendly and helpful attitude to which Your Excellency has paid so generous a tribute in the concluding paragraph of your Note under reply.

"I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration."

VII.

Developments in the year 1929 gave little encouragement to the hope of the Chinese Government to obtain an early abolition of exterritoriality by negotiation. Frustrated by the attitude of the principal Pacific Ocean Powers as shown in the positions previously noted, the Chinese Foreign Office turned to the League of Nations. Article XIX of the Covenant of the League provides that member nations may appeal to have obsolete, unjust and intolerable treaties revised; and at the annual meeting of the Assembly of the League at Geneva in 1929 the principal Chinese delegate, Dr. C. C. Wu, then Chinese minister to the United States, invoked that Article and forcibly presented China's claims for treaty revision. The Assembly heard Dr. Wu's plea politely and with apparent sympathy but did not act.

I was sent abroad in 1929 by the Chinese Government to study and report on conditions in America and Europe that would influence those questions, and some quotations from my numerous reports to the Foreign Office are pertinent. In regard to the League of Nations I wrote:

"While it is politically expedient at this time, as a gesture, for China to invoke her right to appeal to the League, it is unlikely that anything definite will be accomplished thereby. The matter of treaty revision is one of the most touchy spots in European politics, and if once a way is opened for such action through the League it is certain that revision of the Treaty of Versailles will be brought up at Geneva by nations that are suffering under its provisions. Europe in general, and the membership of the League, except a few of the principal Powers, are

disinterested about treaty revision in China; but a powerful bloc of European states, headed by France, will not permit at this time any action by the League that will open a way for revision of the World War peace terms. Moreover, the leading Pacific Ocean Power, the United States of America, is not a member of the League and will not be committed by any of its actions. China's appeal to the League will fail now, not because of any strong opposition to her claims, but because powers behind the scene of European politics will not permit at this time, if they can prevent it, anything that will undermine the Treaty of Versailles."

I wrote as follows from Washington in the autumn of 1929:

"There is no probability that, now or soon, the American Government will modify its position as shown by the State Department's Note of August 10. The fact that the American note was sent the same day as the British note and that the two notes are almost the same in reasoning and conclusions indicates a collusion between Washington and London about the issue of exterritoriality. People in the State Department, when I have accused them of such collusion, deny it and say that the appearance of the notes on the same day and the similarity of argument and conclusions are a coincidence. That is too much for one to believe literally but it probably does not matter. A degree of collusion among the chief Pacific Powers was to be expected and need not deter the Chinese Government."

"This situation makes it necessary for the Chinese Government to consider again the advisability of resorting to unilateral action. In talking with persons in the American Government I have tried to show them that persistence in refusing to change the treaties by friendly negotiation will almost inevitably drive the Chinese Government to unilateral action. The State Department seems to believe that the Chinese Government, beset by serious disorders within and menaced from without by Russia and Japan, will not have the nerve to end exterritoriality. Something ought to be done to show them that China is in earnest."

"I have pointed out to persons in the Government here the equivocal position the United States District Court and the

consular courts will be put in if China does abolish exterritoriality. Merely by refusing to cooperate with the exterritorial courts, and by refusing to recognize and to serve their processes, and by forbidding Chinese to resort to those courts, the Chinese Government can render them innocuous in so far as litigation between foreigners and Chinese is concerned, and the exterritorial courts' functions will be confined to lawsuits among foreigners and offenses of foreigners still having that status and who live inside foreign administrative areas comprising a few square miles, and can afford no legal recourse whatever to foreigners or to foreign business and property throughout China's vast area. In view of this situation, I have argued that it is better policy to concede China's wishes about exterritoriality and other infringements on her sovereignty and get something in exchange."

"When I ask persons in the Government here what it will do if China does abolish exterritoriality by unilateral action they give no positive reply. In fact I do not think the State Department has any definite line of action marked out. It says that if China abolishes exterritoriality the United States Court for China and the consular courts will continue to function as far as may be possible. I have not talked with a single important person in the Government who thinks the United States will use naval and military force to uphold exterritoriality."

VIII.

Exterritoriality Abolished in Principle. At a meeting of the Central Political Council of the Chinese Government with General Chiang Kai-shek presiding, on December 26, 1929, the following Resolution was adopted:

"That in accordance with a proposal of the Foreign Affairs Committee of the Council, the State Council be instructed:

"(A)—To issue a Mandate that beginning from the First Day of the First Month of the Republic (Jan. 1, 1930), all foreign nationals residing in China who are now enjoying exterritorial rights shall observe all laws and regulations promulgated by the Central and Local Governments, and

"(B)—To promulgate as soon as possible the measures relating to the administration of justice in which foreign nationals are involved."

On December 30, 1929, Dr. C. T. Wang, Minister for Foreign Affairs, issued a statement supplementing that Resolution os follows:

"For more than eighty years China has been bound by the system of exterritoriality which has prevented the Chinese Government from exercising its judicial power over foreigners within its territory. It is unnecessary to state again the defects and disadvantages of such a system; but the Chinese Government and people cannot leave this state of affairs without remedy.

"Exterritoriality is no ordinary diplomatic problem. It touches the life of the Chinese people in so many intimate ways that it must be considered by the Chinese Government as being likewise a domestic question of immediate moment. It is for this reason that the Chinese Government is compelled to declare that the Year 1930 is a decisive time and the actual process re-establishing Chinese sovereignty by the abolition of exterritoriality begins on January First. With that in view it will undertake measures designed to release the sovereign rights of China from the trammels of exterritoriality and has accordingly ordered the Executive Yuan and the Judicial Yuan to instruct the Ministries concerned to prepare a plan for this purpose.

"The Chinese Government, relying on the sympathy already shown and the assurance given by the Powers concerned, believes there is no difference of opinion between these Powers and China regarding the principle involved; and it is prepared to consider and discuss within a reasonable time any representations that may be made with reference to the plan now under preparation in Nanking. In this respect, the issuance of the Mandate of December 26th should be regarded as a step towards removing the cause of constant conflict and at the same time promoting good relations between Chinese and foreigners."

Until the branches of the Chinese Government designated to prepare the measures required to put the Mandate ending exterritoriality into practical effect

could accomplish that work the intention of the Government was to observe the status quo and to await results of further negotiations. That was equivalent to abolishing exterritoriality in principle but postponing the de facto termination of the status in the hope that a mutually acceptable process would be agreed on by China and the Powers. Pending universal abolition de facto and not wishing to discriminate against nationals of weaker nations the Chinese Government permitted the exterritorial status to continue with those nations that had, by recent treaties, given it up conditionally or unconditionally.

That action of the Chinese Government did not surprise the Powers. The British and American governments had been apprised of the Chinese Government's intention to declare exterritoriality abolished in principle on January 1, 1930, by the Chinese ministers at London and Washington. Replying to a note of Dr. Sao-ke Alfred Sze, the Chinese minister, on that subject, Mr. Arthur Henderson, British Minister of Foreign Affairs, in an aide memoire of December 20, 1929, referred to the internal disorders in China as a cause of failure to make better progress in negotiations to end exterritoriality, and said: "His Majesty's Government are therefore willing to agree that January 1, 1930, should be treated as the date from which the process of gradual abolition of exterritoriality should be regarded as having commenced in principle and would have no objection to any declaration in conformity with that attitude which the Chinese

Government may think it is desirable to issue. His Majesty's Government are ready to enter into detailed negotiations as soon as political conditions in China render it possible to do so with a view to agreeing to a method and a programme for carrying abolition of exterritoriality into effect by gradual and progressive stages."

IX.

In 1930 I was again sent to America and Europe by the Chinese Government to observe and report on conditions affecting China's desire to revise the treaties. The situation those observations revealed is shown by quotations from my reports.

POLITICAL SITUATION IN EUROPE

"Europe is intensely preoccupied with its own problems and gives little thought to matters in the Far East and to what is happening and impending in China except events as may indicate a drift toward communism. The first and almost the only question asked of this observer was: 'Do you think China is going communist?' When the answer was negative interest became vague.

"Industrial and economic depression with the attending unemployment are the deep concern of all governments in Europe, including England. All of them fear and dread an industrial, socialistic upheaval that will overthrow the existing governments and political organization in Europe. In brief, the European governments are thinking of their own troubles and difficulties and dangers and not of China's. This observer was at Geneva when the German elections took place and the result was regarded as ominous.

"The major conclusion to be deduced from the present state of Europe (Great Britain as a Pacific Ocean Power and because of India, Australasia and Canada being in this category detached from continental Europe) is that her statesmen will not meddle

or interfere in China in any but the most exceptional conditions during the forthcoming next few years.

"This is a favorable situation for the furtherance of China's diplomatic objectives.

"Even the communist movement in China, although it has a disturbing effect there and must be taken seriously, if not as a definite political trend at least as a force causing widespread turbulence and disorder, has had a distinct effect in swinging public opinion and governments in Europe to favor the present Chinese Government, which is regarded as conservative.

THE DECISIVE FOREIGN FACTORS

"The real foreign (governmental and popular) factors in respect to China's aim to obtain complete restoration of her sovereignty within her entire territory lie with the American, Japanese and British nations. These will be discussed separately.

"JAPAN. This observer assumes that Japan's attitude and policy visavis China are well understood at Nanking by reasons of proximity and contacts. It may be mentioned however that Japanese spokesmen at Williamstown and at Geneva uniformly displayed an outward friendliness toward China and voiced a friendly policy of the present Japanese Government. As before European and American politicians and public the Japanese no longer argue on the line they took a few years ago, implying a kind of suzerainty of Japan over China and a vague but positive political guardianship there. They now talk about a special position and "interests" in Manchuria but do not stress that as they formerly did. This does not surely mean a genuine abandonment of certain aims of Japan regarding Manchuria but indicates that the statesmen of this Tokyo Government understand that those old diplomatic cliches have a sinister and suspicious implication in these times and had better be left unsaid. Moreover in this observer's opinion the present Japanese Government is willing to have Europe remain disinterested about the Far East and China as this reduces complications and leaves the outcome to the Powers that are actually potent in that region. Japanese statesmen of twenty and ten years ago were unable to envisage Europe as being eliminated or impotent in Eastern Asia and the Pacific, and the predominance of the United States, of the western Powers, in that area, but present

day Japanese leaders and the younger generation of Japanese diplomats and politicians realize that. Japanese now, I think, understand that the outcome of major Far Eastern questions does not lie with Europe. The rise of America as a world power (as this observer has been pointing out for some years past) changed all political and diplomatic calculations in regard to China.

"In these circumstances, assuming that the Japanese moderates and liberals remain in control of the Government, it is believable that Japan will not oppose and even may support China's desire to abolish exterritoriality and other infringements on her sovereignty. In any case, Japan's spokesmen indicated that position at Geneva and also at Washington. In a number of private talks this observer had with Japanese diplomats all of them expressed that attitude. Chinese statesmen will know how to estimate such expressions at this time. Fundamentally they are sound enough. The sincerity of the Japanese Government in putting out such ideas always must be under a degree of suspicion until confirmed by action. A recrudescence of a Japanese imperialistic and militarist policy visavis China is possible.

"GREAT BRITAIN. The British Government (in contrast to Europe) is keenly interested in conditions and outcomes in China. Britain's relations to India compels interest if other reasons were lacking. In London I was told confidentially by a high authority that the British Government is willing to end exterritoriality and other foreign privileges in China before very long but it thinks there ought to be at least two years of peace in China before it is done.

"I pointed out that no country in Europe can guarantee peace now or at any time, that there has not been complete peace in Europe for more than fifteen years, and the British Empire seldom has been entirely at peace.

"A foremost English political writer told this observer that the policy of the Foreign Office is to maintain a cordial and sympathetic attitude toward treaty revision and to give a little at a time, prolonging the negotiations as long as is possible. In this connection the studied effort to delay action at Shanghai and the propaganda to build up the idea that action of the Powers should await Justice Feetham's report has interest. The diehard British element in China, through their connections

in London, are fighting treaty revision at every point. The argument most used is that revision is impossible while China is in disorder. It is interesting now that the foreign diehard class have almost abandoned argument against treaty revision on the old grounds of inalienable "rights" and international legality. They now argue more on the ground of expediency or inexpediency, apparently realizing at last that the old treaty status is indefensible in justice and international comity. This is a distinct advance in China's favor.

"THE UNITED STATES. The American Government is unlikely to initiate action to end the old status quo in China. It evidently prefers to let the situation drift along until conditions in China stabilize some. The American Government, contrary to Europe, is very much interested in what happens in China and still has a paternal or brotherly feeling toward China, a kind of protective feeling, which however hardly will be expressed positively except in emergency. The State Department feels that the present time is unpropitious for the abolition of exterritoriality and to give up foreign participation in government of the "concessions" at Shanghai. Tientsin, Hankow, and other foreign residential areas are not considered so important as Shanghai. The difficulty of getting action in China affairs is not due to indifference at Washington but to preoccupation of the President and the Government with other matters. Just now the State Department is concerned about the revolutionary trend in South America and the disturbed conditions in Central America.

"The American Government wants to see the China situation clear up and get on a different international treaty basis but it doubts if it is wise to make radical changes now. A prominent man in the Government said to me: 'After all, why should the American Government move to change China's international status as long as the Chinese will allow the status quo to stand?' From the viewpoint of practical American politics the answer to that is 'No reason at all.' That is what it amounts to. The Chinese Government will perceive the hint conveyed in the American statesman's remark.

SOME CONCLUSIONS.

"None of the principal Powers, nor the League of Nations, will initiate action to change the treaty status in China. The

Chinese Government therefore can allow the status quo to continue indefinitely or it can *force the issue by action.* This observer's opinion is that if the Chinese Government wants to get action it *will have to force it.*

"If the Chinese Government does force action by moving unilaterally to end the old treaties it is unlikely that the American or any other government of the Principal Pacific Powers will employ force to contradict such action nor will the American Government participate in a concert of the Powers that requires force or intimidation of China. This also seems true of the present British Government with some exceptions, such as an arbitrary seizure by the Chinese of the foreign settlements at Shanghai. The Powers will use force to hold the status quo at Shanghai now but they do not feel the same interest in other concessions.

"This observer gets an impression in Washington that the American Government considers the existing treaty status with China to be full of embarrassments which will grow as years pass. That is especially so of exterritoriality and the keeping of American naval and military forces in China. Under the circumstances the American Government feels that it cannot with good grace consent to abolish exterritoriality now unless the other principal Powers agree, but if China ends that status by her own action the American Government probably will feel relieved. That may be so of the British Government also."

X.

When the Chinese Government, in December, 1929, publicly declared exterritoriality to be abolished in principle as from January 1, 1930, it informed the Powers and published to the world that it would insist on concluding new agreements before the end of 1930, and when by the autumn of 1930 little progress had been made toward agreement with the principal Pacific Powers it pressed for action. That pressure elicited statements from the American and British governments of their willingness to conduct negotia-

tions, and to the Chinese Government's insistence on them stating specific terms they finally did so early in November of that year. The notes have not been released for publication and their texts cannot be given here. Those Powers expressed themselves as willing to give up exterritoriality under limitations, viz:

1. Evocation, meaning that a verdict in a law case in which a national of one of the Powers is concerned might be appealed from the Chinese courts to a court of the foreign Power concerned.

2. That the Powers would give up exterritorial jurisdiction in civil cases but for a term of years would retain jurisdiction in criminal cases in which their nationals were concerned.

3. That the Chinese Government should appoint foreign judges to act with Chinese judges in cases in which nationals of the Powers were concerned.

4. That exterritorial jurisdiction should continue in the areas within fifty *li* of Shanghai, Canton, Tientsin and Hankow for a term of years.

I learned the content of those notes at Washington and at once gave my opinion to the Chinese Foreign office in a report from which the following is quoted:

"The proposals of the American and British governments are not identical but they are so close in pattern and content that a collusion is evident. Events have plainly indicated this collusion for some time, those governments evidently having agreed privately to hold off complete treaty revision indefinitely or until a more auspicious time for them. Whether Japan is a party to this collusion is not evident.

"A study and analysis of these proposals show that they are unacceptable to China. In fact they propose to extend exterritoriality indefinitely under a kind of camouflage to disguise some of its features. They ask the right of evocation, which means that at any time the Powers see fit they can suspend China's sovereignty and refer cases to a foreign court. The principal foreign residential concessions are exempted, as also are criminal cases in which nationals of those Powers are concerned.

"In my opinion it is impossible for the Chinese Government to regard these proposals as a proper solution of this question. Rather than accept them it is better for the Government to do nothing for the while and to wait until the treaties with the United States and Great Britain expire. The proposals can be interpreted as a covert effort to give exterritoriality a new lease of life under a plausible assumption of willingness to revise the treaties.

"The Legation here asked me to try to learn how much elasticity there may be in the position of the American Government and after confidential talks with a number of people I am convinced that there is not enough elasticity to warrant an expectation that a satisfactory compromise can be reached now. The real attitude of the State Department is to 'stand pat' with a hope that the Chinese will not force the issue for a few years. The Department lately announced that it is ready to reopen negotiations for revising the China treaties but I think that is for public effect, to indicate superficially that the American Government is not holding back and is not taking an antagonistic position toward Chinese national aspirations. I think that the State Department will do nothing of consequence until it is forced to act and nothing that I can see will force it to act except compulsion applied at China's end.

"The situation is virtually a deadlock with the important Powers waiting for China to move. As I have said in previous reports, *talk will not move them now at Washington or London. It requires action.*

* * *

"I think it is a good thing for the Chinese Government to employ foreign legal advisers for a few years after exterritori-

ality is abolished: but it should do that voluntarily, select them itself, pay their salaries, ask and follow their advice or reject it at will. It should not allow foreign governments to impose advisers on China, nor select them, nor dictate their duties and powers.

"In the foreign settlements at Shanghai, and possibly at Tientsin and Hankow, the Chinese Government might properly for a term of years, and to its advantage, have some foreign judges who are appointed and paid by it to sit with Chinese judges in cases when foreigners are concerned and enforce Chinese law. That is a horse of a different color. The proposals to exempt the principal foreign settlements shows the gist of the positions of the Powers. I have felt for some time that in the end they will be willing to trade off exterritoriality in general for an extension of some form of foreign control at Shanghai. I think they will not insist on the other treaty ports. Those, and some of the other conditions, are advanced now as trading-points. To hold on at Shanghai is the point d'appui of their diplomacy."

Statesmen and diplomats are as human as most people and at times are prone to give way to irritations and to despair of reaching solutions by agreement. When those disagreements involve grave issues the result often is war. When the issues are not grave enough to cause war their prolongation without adjustment invariably causes disputes and incidents which disturb the comity of nations and make the position of foreigners living in alien countries difficult.

A time of irritation and despair of agreement in negotiations between China and the Powers about exterritoriality and related questions came in the latter part of the year 1930. The Mandate which had abolished exterritoriality in principle was supposed to be made effective at the beginning of 1931. The notes exchanged between the governments in the

autumn of 1930 showed that an agreement satisfactory to the Chinese Government was improbable then or soon, and it seriously considered declaring exterritoriality to be ended de facto on January 1, 1931. I was apprised of that situation at Washington and reported as follows:

December 28, 1930.

"I am somewhat relieved to learn from the Legation that the Government has decided not to take the action ending exterritoriality before next February. I had intended to send a cable advising postponement but after conferring with the Legation I thought that was not necessary as you will get my reports of December 4 and December 14, now in the mails, before the Government acts finally. From those reports you will know that for reasons set forth therein I think it will turn out better if the declaration ending exterritoriality de facto is held off for a few months yet. Unless the exigencies of Chinese domestic politics require immediate action there is nothing in the international situation, as I see it, to compel that. The Government need not be precipitate. Time is working in China's favor and this tendency is apt to continue for two or three years longer until Europe and America emerge from the financial and industrial crisis and the attendant political unrest.

* * *

"I would not press the negotiations now but would let them die out gradually. As long as negotiations are supposed to be going on the Government cannot, without seeming to act abruptly and discourteously, suddenly take unilateral action. The Powers can, if China permits, drag negotiations along endlessly and thus stave off action by China by pretending to hold out hope of agreement when in fact there is no present intention on their part of agreeing to terms that accord with China's minimum demands. I therefore suggest that after a month or two the Government will let it be known that the negotiations have reached a deadlock and for the time will be suspended. Soon thereafter let it be known that the Government, despairing of arriving at its minimum requirements by negotiations, considers that unilateral action is the only way to cut the Gordian knot.

Follow that by a forthright declaration that on and after a date stated in the declaration that China will not recognize the existence or operation of exterritoriality in her domain, will not longer cooperate in making that status effective and will take measures to render it completely ineffective. (Certain special small areas, as the foreign settlements at Shanghai and one or two other places, to be excepted, not in principle but because those areas are under a degree of actual foreign administration which for the time will not be interfered with.)

* * *

"I think a period of several months should be allowed between the declaration abolishing exterritoriality and the making of the declaration effective. The Government is under no compulsion of haste in the matter."

Counsels of that nature from many sources, combined with some mollifying concessions of foreign diplomats conducting the negotiations, influenced the Chinese Government to allay its disappointment and prolong them for several months. Several times in those months the Chinese Government, by the public utterances of Dr. C. T. Wang and other official spokesmen, gave plain warning that failure of the Powers to meet China's minimum terms would lead inevitably to unilateral action by China. Bit by bit the Powers gave ground, especially the British Government which, having next to Japan the largest material stake in the issue, was anxious to reach an amicable solution.

Attention focussed on the Sino-British negotiations conducted at Nanking by Dr. Wang for the Chinese Government and Sir Miles Lampson, the British minister to China. It was felt that whatever the British Government agreed to would also be conceded at Washington. Japan seemed to be playing a lone

hand and waiting the outcome of the Sino-British and Sino-American negotiations, which, it should be said, were all the time conducted in a friendly spirit and in good humor.

The British Government finally yielded on three points of its proposals, the right of evocation, reservation of criminal cases, and the appointment of foreign associate judges. It yielded somewhat on its fourth point, which stipulated that areas adjacent to four foreign settlements be exempted, and intimated toward the end of the negotiations that Canton and Hankow would not be insisted on. That would leave only Shanghai and Tientsin as excepted areas.

Many people think of exterritoriality as identical with foreign municipal administration of places like Shanghai and Tientsin. That is not so. Exterritoriality is coextensive with the whole territorial domain of China. It could exist unimpaired if the foreign municipal areas were abolished. On the other hand, the foreign municipal areas could continue to exist and function after exterritoriality ends. The Chinese Government recognizes the distinction and understands that the abolition of exterritoriality and rendition of the foreign municipal areas require different treatment.

In refusing to allow Shanghai and Tientsin to remain exterritorial areas the Chinese Government was actuated by a deeper purpose than what relates to those municipalities. If that was conceded it was

known that the Japanese Government in turn would insist that municipal areas under Japanese administration in Manchuria (Mukden, Dairen, Changchun, et al) and the entire "zone" of the South Manchurian Railway should retain exterritorial status.

Feeling unable to yield on those points the Chinese Government reluctantly stated that it felt it to be useless to continue the negotiations then. Its declaration of purpose to terminate exterritoriality at the end of the year 1931 followed.

XI.

The frequent assertion that the Chinese Government in declaring exterritoriality to be ended without waiting on the consent of all the treaty Powers acted without justification and due consideration is disproved by an examination of all the circumstances. Before taking unilateral action the Chinese Ministry of Justice with the help of foreign legal advisers made a thorough study of international law bearing on the question. Those experts found ample legal grounds and precedents for the contemplated move.

Doctrine of Rebus sic Stantibus. China's right to abrogate treaties by unilateral action derives its sanction from the principle of rebus sic stantibus (things so standing), that is, that a change in the circumstances or conditions which brought about a treaty may justify its cancellation by one of the parties.

In stating the fixed purpose of the Turkish Government to terminate the capitulations (exterritoriality),

Ismet Pasha, the chief Turkish delegate at the Lausanne Conference, said:

"It is an undoubted fact that in taking such a decision Turkey has merely exercised a legitimate right. As a matter of fact the capitulations are essentially unilateral acts. In order that an act may be regarded as reciprocal it must above all contain reciprocal engagements. From an examination of the texts the evidence shows that in granting the privileges in question to foreigners in Turkey the Ottoman emperors had no thought of obtaining similar privileges in favor of their subjects travelling or trading in Europe. It is for this reason that Feraud Giraud says: 'These acts are not so much international treaties as grants of privileges.'*

Professor Louis Renault observes that such treaties "are voluntary and spontaneous concessions, always revocable and liable to lapse on the death of the sovereign who had granted them." They lack, he said, that which above everything constitutes a treaty, that which is the distinctive and eventual character of any convention, namely, the reciprocal character to which the reciprocity of the engagements and the double signature bear witness. Even supposing the capitulations were bilateral conventions, said Professor Renault, it would be unjust to infer from that that they are unchangeable and must remain everlastingly irrevocable. He said further: "Treaties whose dura-

*1 Pierre Crabites, Amer. Bar Assoc. Journal, Vol. XI, p. 485.

2 Edgar Turlington, that Journal, Vol. 18, p. 699.

3 The Turkish delegation was supported also by the fact that the so-called Turkish National Pact, which had been approved by the Parliament at Constantinople, January 28, 1928, and was in the nature of a constitutional law, contained a declaration that the restrictions imposed upon Turkey by the capitulations could no longer be tolerated. The Turkish delegation stated that their government had declared before the convening of the Lausanne Conference that this pact embodied the conditions upon which alone a durable peace could be made.

tion is not fixed imply the clause rebus sic stantibus, in virtue of which a change in the circumstances which have given rise to the making of a treaty may *bring about its cancellation by one of the contracting parties if it is not possible to cancel it by mutual agreement.* Cases must necessarily be admitted in which the State must be able to declare itself free from any engagement, even if it has not expressly reserved this right by a clause in the treaty. Respect for engagements contracted should not, for example, be pushed to a suicidal extent. Though a State may be required to execute burdensome engagements contracted by it, it cannot be asked to sacrifice its development and existence to the execution of a treaty."

Professor Despagnet, celebrated French jurist, wrote:

"The cases in which the denunciation of treaties is legitimate may be classed in three categories, namely:

"(*a*) When the observance of the treaty has become dangerous for the political or economic existence of a country.

"(*b*) When the circumstances which have given rise to the treaty have changed and deprived the old agreement of its reason for existence.

"(*c*) Finally, a treaty may be denounced when it has become incompatible with the common international law of civilized States to which the contracting countries subscribe."

In an authoritative analysis of the doctrine of *rebus sic stantibus* published in the American Journal of International Law in July, 1927,* the author, J. W. Garner, stated this general conclusion:

"If the treaty was never voluntarily entered into by the dissatisfied State, but was extorted from it under pressure, as some of the Chinese treaties were, and if it is based upon an inequality which was never the result of a change of conditions but was deliberately established by the terms of the treaty itself, and especially if it is an inequality which derogates from the sovereignty of the dissatisfied State, *its right to terminate the treaty when the other party refuses to consent to its modification, abrogation or replacement by another one, would seem to be incontrovertible,* otherwise the postulate that international law rests upon the principle of equality and sovereignty of states has no meaning in practice."

A majority of modern writers on international law support the principle that a State is justified by changed conditions, and failing to obtain revision by mutual consent within a reasonable time, in ending a treaty by its own act. There follow some pertinent quotations from leading authorities:

Hall, International Law 6th ed. (1909) 342.

"Neither party to a contract can make its binding effect dependent at his will upon conditions other than those contemplated at the moment when the contract was entered into, and on the other hand a contract ceases to be binding so soon as

* *See* Appendix G.

anything which formed an implied condition of its obligatory forces at the time of its conclusion is essentially altered."

P, Cobbert, Cases & Opinions on International Law 3rd, I. p. 329.

"The right of one signatory Power to abrogate or annul the provisions of a treaty, without the consent of the other parties thereto, would seem to depend on the following considerations: . . . (2) Having regard to the continuity of State life, moreover, it seems impossible to maintain that a treaty, even though on its face it purports to be of indefinite duration, continues binding for all time, and notwithstanding any change of conditions, however vital, unless discharged or modified bv mutual consent. Both the changing conditions of national life, and the reason of the thing, therefore appear to suggest that it is an implied condition of a treaty, even though it purports to be indefinite, that it shall be regarded as terminable by any material change in the fundamental conditions which obtained at the time at which it was entered into."

P, Cobbert, Cases & Opinions on International Law 3rd, I. p. 327.

"In many of the older treaties there was inserted the *clausula rebus sic stantibus;* by virtue of which the treaty might be construed as abrogated when the material circumstances on which it rested changed. But, even in default of express provision, the maxim *convented omnis intelligitur rebus sic stantibus* may reasonably be held to apply. In order to have this effect, however, the change must be one which takes away the very foundation of the engagement. To the objection that such a principle is perilously lax one can only reply that some such rule would appear to be an inherent necessity; and that to pronounce any treaty binding for all time despite such change of conditions would strain the principle of the sanctity of treaties beyond the breaking-point, and probably imperil it in other cases."

P. J. Baker, The Obligatory Jurisdiction of the Permanent Ct. of Int. Justice. Brit. J. I. L. 1925, p. 99.

"But there have been other occasions, less discussed in text books on international law, when the doctrine of *rebus sic stantibus* has been effectively and justifiably applied. One such occasion was dispute between France and Great Britain in 1908 concerning an eighteenth-century treaty relating to fishery rights

in Newfoundland. France claimed that the dispute, turning, as it did, on the interpretation of a treaty, fell clearly within the terms of the Franco-British Arbitration Treaty of 1903. Newfoundland, however, informed the British Government that if the dispute were submitted to arbitration would leave the Empire; and Great Britain in consequence refused arbitration, basing her action on the ground that the dispute fell within the treaty reservation of 'vital interests.' The phrase 'vital interests' no doubt adequately covered the British contention, but its true justification was the doctrine of *rebus sic stantibus,* under which it was plainly open to Great Britain to plead that, in view of the growth of a large self-governing population in Newfoundland, conditions had changed so profoundly as to abrogate the undertaking she had given more than a century before.*

J. L. Kruber, Droit des Gens Moderne de l'Europe, 2nd ed. Paris 1874.

"Les Traités cessent d'être obligatoires, 7" lors du changement essential de telle ou telle circonstance, dont l'existence était supposée nécessarie par les deux parties *clausula rebus sic stantibus,* soit que cette condition a été stipulé expressement soit qu'elle resulte de la nature même du Traité."

E. S. Creasy, First Platform of International Law 342, (1876) 40-41.

"....the breach of a Treaty is always a legitimate cause of war according to the received practical regulation of International Law, yet there is nothing morally wrong in such breach, if the State that breaks the Treaty has been unfairly and hardly bound by the Treaty. Thus Dr. Momsen, in his well-known 'History of Rome' uses these words:—'A great nation does not surrender what it possesses, except under the pressure of extreme necessity; all treaties which make concessions are acknowledgements of such a necessity, not moral obligations. Every people justly reckons it a point of honour to tear in pieces by force of arms treaties that are disgraceful.' "

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* NOTE: The application of that case to the position of China is evident. The Chinese Government should not be expected to continue to enforce exterritoriality and other special privileges of foreigners in China in opposition to Chinese public opinion.

Oppenheim, International Law (1912) 2nd ed. I, 574, 5

"And the States and public opinion everywhere have come to the conviction that the clause *rebus sic stantibus* ought not to give the right to a state at once to liberate itself from the obligations of a treaty, but only the claim to be released from these obligations by the other parties to the treaty. . . For it is an almost universally recognized fact that vital changes of circumstances may be of such a kind as to justify a party in modifying an unnotifiable treaty. . . that all treaties are concluded under the tacit condition *rebus sic stantibus*,"* Ibid 572, 573.

Arguments opposing the right of a State to terminate treaties by unilateral action usually are based on the Declaration of London made by certain of the principal European Powers in 1870. An analysis of that Declaration and its implications is made by F. Smith in his work on International Law, as follows:

"The following proposition was affirmed by the Declaration of London in 1870:—'The plenipotentiaries of North Germany, of Austria-Hungary, of Great Britain, of Russia, and of Turkey, assembled today in conference, recognise that it is an essential principle of the law of nations that no power can liberate itself from the engagements of treaty, nor modify the stipulations thereof, unless with the consent of the contracting powers, by means of amicable arrangement.'

"But at the moment of this Declaration the powers concerned were engaged in acquiescing in a flagrant violation of the principle enunciated: for Russia, forbidden by the Treaty of Paris of 1856 to maintain a fleet in the Black Sea, had seized upon the opportunity afforded by the Franco-German war to declare herself released from the restriction so imposed without consulting any of the other parties to the treaty. It was not politically expedient at the time to resist by force the Russian claim: and the declaration above quoted was an effort to restore the some-

* NOTE: Oppenheim takes a more conservative view of the right of unilateral abrogation of treaties than most authorities, but he says that all treaties imply *rebus sic stantibus*.

what damaged authority of the general principle of the binding effect of treaties.

"That it was not a very successful effort was shown by the events of the autumn of 1908. Austria was party to the Declaration of London. By the Treaty of Berlin of 1878, Bosnia and Herzegovina while remaining under the suzerainty of the Sultan of Turkey, were placed under Austrian occupation and control. In 1908, Russia was exhausted by her war with Japan and by internal troubles and Turkey had but recently come through the revolution which deposed Abdul Hamid and placed the Young Turks in a position of somewhat precarious power. Bulgaria having seized the line of the Oriental Railway Company, proclaimed her independence from Turkey on October 5, and Austria, two days later, with only one day's warning to France and England, converted her occupation of Bosnia and Herzegovina into annexation, on the plea that those countries wished for constitutional institutions, and that the grant of such could more conveniently be made if the anomaly of Turkish suzerainty were removed. Turkey was indignant and boycotted Austrian goods. Servia and Montenegro fearing absorption in their turn, clamoured for war, while the signatory powers of the Treaty of Berlin insisted upon a Conference, and did their best to restrain the Servian indignation.

"In January of the following year (1909), however Turkey accepted £2,200,000 in compensation. Russia, acting, it is with good reason believed, under the influence of Germany, shortly afterwards recognized the annexation, and Great Britain persuaded Servia to give way. A Conference was no longer necessary, and the powers agreed to amend the treaty and legalise the action of Austria.

"That the treaty had been set at naught there can be little question: but as the two provinces were already practically in Austrian hands, the actual change effected was of little moment; and the case, though undoubtedly serious from the point of view of international law, was hardly so serious as the case of Russia and the Black Sea in 1870. *Both in theory and in view of subsequent events, it may be gravely doubted whether a standard so inelastic as that set up by the Declaration of 1870 does not involve an impossible strain on the respect conceded to international law.* No temporal limits of any kind are assigned by

the declaration to the duration of treaty obligations, and the refusal of one party to release another may in theory perpetuate an obligation which had its origin in wholly different conditions.

"Wheaton treats the Declaration as elementary; and observes: *'It is melancholy to think that the most civilised powers of the world should have considered it necessary to put forward such a Declaration in the year 1870.'*"

This view seems to rest on a confusion between the moral and legal aspects of the case. Carefully observing this distinction we may lay down the following propositions:—

"1. No independent Government can indefinitely and for all time bind its successors by treaty, for the community so shackled would no longer be completely independent. It should follow therefore that every state becomes legally entitled to repudiate a treaty of indefinite obligation as soon as the conditions which preceded its formation have undergone substantial modification.

"2. If the obligation is temporary and definite, or if the circumstances under which it was made are not materially changed, the breach of it is legally wrongful.

"It is difficult, however, to avoid the conclusion that in the present state of opinion, and unless the influence of the Hague Tribunal fosters the spirit of respect for law more rapidly than can reasonably be hoped, *the validity of a treaty depends to an unfortunately large extent upon the power at the moment of the parties to it, and the political importance of the interests which may induce the one party to violate, and the other to insist upon the maintenance of, its terms.*"

XII.

In his work on International Law previously quoted from, Justice Smith makes the sapient observation that "the validity of a treaty depends to an unfortunately large extent upon the power at the moment of the parties to it and the political importance of the interests which may induce the one party to violate, and the other to insist upon the maintenance of, its terms."

The beginning of the year 1931 found conditions in the world particularly favorable to decisive action of the Chinese Government in respect to exterritoriality. The attitude of the Japanese Government toward China was for the time friendly and conciliatory, a position caused partly by bad economic conditions in Japan and by the menace of a proletarian outburst and partly by the advance of liberalism there, and a change of the Government at Tokyo from any cause might change the policy. Similar considerations of a broader scope influenced the policy of the British Government. The American Government was preoccupied with the prevailing business and economic depression, with its South and Central American complications, with the problem of world peace, and with the threatening conditions in Europe. Economic depression, revolution and the threat of revolution troubled Europe to the momentary exclusion of Asia. All those governments were deeply concerned about the menace of communism, which made them hesitate to weaken or contribute to the overthrow of a conservative liberal government in China.

Moreover the governments of the Powers without doubt realize the legal weakness of their position on exterritoriality. One is safe in assuming that none of the Powers will want to submit the question to the League of Nations or to the International World Court because of the embarrassing issues that that would afford a precedent for.

In some quarters there is a disposition to blame the Chinese Government for taking advantage of the parlous world situation to deal arbitrarily with the status of foreigners in China. Statemen and diplomats of all countries will smile at that argument for they know that to catch political antagonists and nations at a disadvantage and push them into a corner is the most used method known to politics and diplomacy. It has been used against China many times; in fact most of the treaty terms to which China now objects were obtained that way.

The world conditions that gave the Chinese Government a chance to shape its own course in some phases of treaty revision are not permanent. I doubt if there is a practical statesman on earth who would not think the Chinese simple not to take advantage of their opportunity.

PROSPECTIVE

SPECIAL COURTS FOR FOREIGNERS
CONFUSION ABOUT EXTERRITORIALITY
STABILITY, SECURITY AND SAFETY
POSSIBLE CONFLICT OF JURISDICTIONS
FOREIGN MUNICIPAL AREAS
SHANGHAI AND ITS FUTURE
RESIDUE

PROSPECTIVE

I.

THE Mandate of the Chinese Government abolishing exterritoriality intended to become effective on January 1, 1932. The time from its pronouncement on May 4, 1931, to the end of that year provided an interim during which those affected might prepare for the change. It provided also a period when negotiations between China and the Powers might settle some of the matters at issue and thereby avoid some consequences that could be foreseen if both China and the principal Pacific Powers should continue for some years to differ about the treaty status and try to enforce their different positions.

In declaring negotiations to be deadlocked the Chinese Government stated its hope that it would be possible to reach substantial agreement with the Powers before its declaration was enforced.

II.

Prior to the Chinese Government's declaration of its purpose to end exterritoriality at the end of 1931 all except four of the nations having exterritorial status already had by new treaties given it up or had agreed to give it up whenever it was terminated with all the Powers. The nature of those agreements should preclude the foreign governments that signed

them from taking any action of the principal Powers after January 1, 1932, in continuing their exterritorial courts at Shanghai and in other foreign municipal areas, if they should do that, as an excuse to deny that their own agreements are operative. Such a course is urged by some foreigners in China and by some writers, but it is doubtful if those governments will take an umbrageous stand in view of all the conditions and circumstances. If they do not obstruct and give up their exterritorial status gracefully in accordance with the new agreements that would leave the three principal Pacific Powers and France as opposing the wishes of the Chinese, and whatever irritations and complications arise thereafter and impairment of foreign position and injury to foreign trade that might result from Chinese retaliatory measures, very likely would fall on the nationals and commerce of those Powers. The Chinese Government has declared that it will discriminate between those nations that treat it with equality and nations that refuse to do that, and representative Chinese civil bodies have uttered similar sentiments.

III.

Special Courts for Foreigners. At this time of writing all the measures for taking over jurisdiction of foreigners by the Chinese Government have not been completed but the chief processes are outlined quite definitely. In July, 1931, the Ministry of Justice decided to organize Special Chambers in the

Chinese courts for the trial of civil and criminal cases in which foreign nationals are concerned. Those Special Chambers will be established in the following courts:

(1). District Court in the Special Area of the Three Eastern Provinces: 2 Judges, 1 Procurator and 3 Clerks.

(2). District Court at Shenyang: 3 Judges, 1 Procurator and 4 Clerks.

(3). District Court at Tientsin: 3 Judges, 1 Procurator and 4 Clerks.

(4). District Court at Tsingtao: 2 Judges, 1 Procurator and 3 Clerks.

(5). District Court at Shanghai: 3 Judges, 1 Procurator and 4 Clerks.

(6). District Court at Hankow: 3 Judges, 1 Procurator and 4 Clerks.

(7). District Court at Chungking: 2 Judges, 1 Procurator and 3 Clerks.

(8). District Court at Foochow: 2 Judges, 1 Procurator and 3 Clerks.

(9). District Court at Canton: 3 Judges, 1 Procurator and 3 Clerks.

(10). District Court at Kwunmin: 2 Judges, 1 Procurator and 3 Clerks.

With the exception of that in the District of Kwunmin all of the Special Chambers will be under the direct jurisdiction of the provincial High Courts to which the District Courts respectively belong. Owing to special circumstances the Special Chamber at Kwunmin will be under the First Branch Provincial Court of Yunnan. Two medico-legal experts will be appointed to each Special Chamber. It is contemplated that there will be nine legal counsellors to the Special Chambers, one Chinese and eight foreigners.

The Chinese Government's budget for the year 1931 allotted $2,250,000.00 China currency for expenses in preparing for and taking over jurisdiction of foreigners, for the following items: establishment of Special Chambers, improvement of prisons where foreigners will be confined, additional judicial and administrative expenses, salaries of foreign legal advisers and their expenses and travel allowances.

An official communique of the Ministry of Justice gave details of prisons for the detention of foreigners, viz: the cells will be three metres high, three and one-half metres long, and two and two-fifths metres wide. These cells will be for one occupant only. Foreigners will be committed, except at times temporarily, only to prisons having those conditions. Foreign prisoners will be given foreign food.

The foreign legal advisers will have no absolute judicial functions but at times they may sit on the bench of the Special Chambers with the Chinese judges in order to observe the trials of cases and to assist the Chinese judges by advice. They will be permitted to report to the Ministry of Justice on cases when they may think injustice has been done and legal errors made.

The New Chinese Code.* The new China civil and criminal codes do not differ materially from those of most western nations. Foreign lawyers who have studied them compare the new codes to those of

* A synopsis of the new Criminal Code is given in Appendix F.

Switzerland. As in England and America, an accused is assumed to be innocent until he is proven to be guilty. In civil suits the burden of proof rests with the plaintiff. The admissibility of evidence is given wider scope than in England and America and other countries where there is trial by jury, the presumption being (as elsewhere) that judges are not as susceptible to appeals to sentiment and emotion and not as likely to be confused in reasoning and about the law as juries are. Almost the only point that is criticized in the modern Chinese juridical practice, from a western viewpoint, is that bail is not compulsory in cases when bail is admissible; bail can be allowed or refused by the judges. Lawyers in the Judicial Yuan and the Ministry of Justice believe that the codes will be changed and that bail will be made compulsory in all bailable offenses.

A comparison of the punishments for certain offenses under the China code with the same offenses under British and American codes shows but slight differences.

MURDER AND HOMICIDE

First degree; British law death penalty or life imprisonment, American law death penalty or life imprisonment, Chinese law death penalty; second degree, British law from ten years to life imprisonment, American law twenty years to life imprisonment, Chinese law life imprisonment or not less than ten years; manslaughter, British law life imprisonment or less

according to degree, American law from fifteen years imprisonment to a fine of not less than U.S. $1,000.00 or both fine and imprisonment, Chinese law not less than one year and not more than seven years imprisonment.

Robbery, Embezzlement and Fraud

British law from seven years to life imprisonment according to degree; American law imprisonment depending on degree; Chinese law imprisonment up to ten years depending on degree.

Capital Punishment

The new China criminal code stipulates that the death penalty shall be executed by strangulation within the precincts of a prison and no death penalty may be executed without confirmation by the Ministry of Justice. Beheading and shooting are sometimes used by the military authorities. No cruel and unusual punishments are allowed by law. Sentences of life imprisonment and death must be reported immediately to the Ministry of Justice. Sentences of imprisonment for five years and more must be reported to the Ministry within one month after pronouncement and those for shorter periods within three months after pronouncement. The history of capital punishment through the ages shows that China is not behind the times in that matter. Only a few nations in Europe and a few States in the United States of America have abolished the death penalty.

Dr. Wang Chung-hui, under whose supervision the modern Chinese law codes were compiled, a work taking nearly twenty years, said in an address before a foreign Bar Association: "While it is our desire, as far as it may be found feasible, to have the juridical practice of China conform with that of the remainder of the civilized world, nevertheless we have to bear in mind, in revising and making our laws, that the primary purpose is to apply them to the Chinese people and to have them suitable to Chinese customs, habits and ideas, and is not to make them suit a few thousands of foreigners who choose to live among us."

IV.

Very confused and divergent ideas and opinions are held about exterritoriality in China. Primarily one is confronted with two points of view, Chinese and foreign, which stand for different theses; but all Chinese do not think alike on the question and there is much difference of opinion among foreigners who live in that country.

One should comprehend what exterritoriality includes. I have often been impressed with the vague understanding of that among foreigners who live in China. After listening for many years to comment of those foreigners on that topic I think that most of them have little understanding of what exterritorial status is and what it can do for them. They believe it protects them in ways it really does not and consequently they have apprehensions about its abolition which are exaggerated or wholly incorrect.

Exterritoriality at most can do little more than protect, in the sense of putting them under the laws and authority of their home governments, the *persons* of foreigners. Presumably it assures them a fair trial if they get into court and humane punishment if they are convicted of crime. Most foreigners feel safer abroad when under their own government because they know something of the laws of their home countries and therefore are less likely to infract them unwittingly or to make mistakes about the legality of business transactions. The foregoing applies to people who try and want to observe the law. The "shady" and criminal classes of foreigners in China sometimes would like to be exempt from home government authority and some go to China to escape from that.

Some foreigners in China believe that exterritoriality gives protection to their business activities there. I think that is dubious although there are instances when it may be so. Relation of justice to business is in the form of civil cases in the courts and there it is evident that exterritorial status gives foreigners only a limited protection if indeed it gives them any protection at all. In business disputes between foreigners having exterritoriality and Chinese, if the foreigner is plaintiff the case goes to a Chinese court and if the Chinese is plaintiff the case goes to the foreigner's court. It is plain therefore that in probably one-half of civil lawsuits the Chinese courts have jurisdiction, so exterritoriality is no protection

to the foreign litigant in a large proportion of cases. It may or may not be to a foreign litigant's advantage in cases when he is a defendant to have trial in a foreign court; that depends on the merits of the case, assuming that the foreign court makes an honest and correct decision. Foreigners lose lawsuits with Chinese in foreign courts in China about as often as they lose them in Chinese courts.

Of fifty or sixty foreign nationalities having citizens and subjects living in China less than twenty have diplomatic and consular representation there and not all of those ever have had exterritoriality, and it never has appeared that those non-exterritorial foreigners are handicapped in business by the lack of it. Exterritoriality always has had a limited scope as to foreign lawsuits against Chinese. Of ramifications of export and import trade in China the preponderance of transactions originate or terminate outside the foreign municipal areas. If a foreigner has a business claim against a Chinese outside the treaty ports and concessions he must depend on Chinese authority to satisfy it, or failing to obtain satisfaction that way the matter goes into diplomatic channels to be adjusted by negotiation. The foreign firms that have been most successful in China are those which have followed a policy of adjusting business disputes with the Chinese by compromise and arbitration — methods long used by the Chinese. There are few instances of foreign firms gaining in the long run by bringing their Chinese dealers and customers into court. Commerce

depends to a considerable extent on good will. It is questionable if the foreign trade of China, and especially that part of it which occupies foreigners, can develop under conditions that cause and keep alive ill will. Foreigners may win (although that is doubtful) more lawsuits under exterritoriality than they will under Chinese law exclusively and in Chinese courts but they may not do as much business that way.

On this point some observations regarding the British Trade Mission that visited China in 1930, made in 1931 by the London "Financial News", are pertinent:

"No real answer can be given to the general British thesis that China is not yet ready to offer the assurances which the abolition of extraterritoriality implies. That, however, does not greatly disturb the Chinese Government, whose chief concern is to do away with a system which wounded Chinese pride. Mr. C. T. Wang is accordingly in a strong position, for he is basing his demands on a thing not capable of logical argument or bargaining. At need he can, without any immediate loss, resort to unilateral action, and, if we attempt to resist he holds in reserve the weapon of anti-British boycott, which the delegates to the International Chamber of Commerce Congress in 1929 did not hesitate to threaten. The disturbances in Canton may induce Nanking to hold its hand till the Government has a less troubled outlook; but that is a matter beyond British control or calculation."

As to justice, it is probable the Chinese have lacked that in foreign courts as often as foreigners have lacked justice in Chinese courts. Absolute justice is an unattainable ideal.

I am familiar with the complaint that foreigners have difficulty in getting justice in oriental courts.

(The same complaint often is made about western countries.) It is probable that there have been more complaints on that point concerning courts in Japan than in any other country, but if foreigners feel (and often they do) that they are at a disadvantage in Japanese courts when the opposing litigants are Japanese they have to stand it and adjust their business risks accordingly. In Japan the alleged favoritism of the courts for Japanese as against foreigners in business litigations led logically to the foreigners' protecting themselves by putting their business with Japanese largely on a cash basis. At one time that situation was so bad that there hardly was a native firm in Japan that could purchase commodities abroad or from a foreign firm without giving irrevocable bank credits before the goods would be shipped or delivered.

Once I went over a newspaper file in Japan that was published when the abolition of exterritoriality there was being discussed and the arguments against the change were almost exactly the same as those used by foreigners in China now. Doleful predictions of what would happen to foreigners in Japan and to foreign trade with that country were made. What has happened? In the years immediately following the abolition of exterritoriality there were some unpleasant incidents imperiling foreigners but that phase soon passed. The sale of foreign goods in Japan has increased more than twenty-fold since exterritoriality was abolished and Japan's export trade

has increased in about the same proportion. (That is not cited as evidence that it helped trade to abolish exterritoriality for that probably had little effect on trade.) Less of Japan's export and import commerce is transacted by foreigners in Japan now than formerly. That change is due to economic processes and a growing knowledge of the Japanese about the way to conduct foreign trade. It can be expected that the same thing will happen in China, indeed it began some time ago, but exterritoriality cannot defend the foreigners against economic evolution.

v.

Stability, Security and Safety. The statement, "exterritoriality cannot be surrendered until China has a stable government that can guarantee security to foreign investments there and safety and justice to foreigners", has been repeated so often as an argument that should quite settle the matter that it is worth analyzing.

What constitutes a stable government? Is it that one sovereign or one set of principal officials and one legal code must be retained for a fixed period? And what time is the measure of such stability?

If that is the standard no government on earth is stable. Taking the period since the end of the World War, the form and personnel of Chinese government have changed no more than those of many nations in Europe and less than in some of them. Chinese legal codes have in that time been changed more than has

occurred in most countries, but that was a condition for the termination of exterritoriality and cannot be cited as instability of an objectionable or dangerous nature. It is doubtful if any government in Europe can give assurance that five years from now its institutions will not have undergone fundamental changes and no one but a simpleton would expect that the personnel of any government will remain the same from year to year. Nor is there ever much stability in laws of a country; they are added to and amended and repealed frequently.

The contention that there is not a stable government in China is founded on the fact that for twenty years the country has been undergoing a political revolution attended by a fundamental change in the form of government, by the usual number of internal and external troubles and disorders and by the usual number of changes in official personnel. In that time China has been five times invaded by foreign armies and parts of her territory occupied and controlled by them for considerable periods. There have in that time been half a dozen major civil wars and a score of minor civil conflicts. There has been an outburst of communism that has slain hundreds of thousands of Chinese and destroyed hundreds of millions dollars worth of Chinese property.

In all that time less than one hundred foreigners have been killed and injured and less than two millions dollars worth of foreign property destroyed by being involved vicariously or otherwise in the

turbulences. Exterritoriality could not protect those foreigners or their property in those circumstances and had no relation to their dangers and losses except as that status of foreigners might arouse an anti-foreign feeling among Chinese. If revolution should be taken as a reason for applying exterritoriality in a country then it ought to have been applied in the belligerent countries of Europe during the World War, in Russia after that war, and might be applied in at least two countries in Europe now.

As relating to the position of foreigners in China security and safety do not have quite the same meaning. Security usually applies to property and safety to persons.

No government can give absolute security to property in its territory: it cannot altogether prevent loss from theft, from fire, from acts of God and destructive forces of nature, from the effects of laws intended for good of the majority which may adversely affect some interests, from economic evolution. No government can give absolute safety either to its own citizens or to foreigners within its territory: it cannot altogether protect them from being murdered, from acts of God and the forces of nature, from the consequences of their own foolishness and recklessness, from injury due to accident. Nor have foreigners in an alien country a right to expect and claim better security for their property and greater safety for their persons than are had by citizens of the country. Yet in diplomatic notes to the Chinese Government some Powers

have demanded as a condition preceding the abolition of exterritoriality that the Chinese Government shall "guarantee" security to foreign property and safety to foreigners in China. Foreigners (like many religious missionaries) may ignore the warnings of the Chinese Government and of their own consular and diplomatic officials and remain in isolated and bandit-infested regions of China or stay directly in the path of battling armies, and if they suffer death and injury the Chinese Government will be held responsible and an outcry made about it.

That exterritoriality does not and cannot provide safety from criminal acts is evident. Foreigners in China run the same risks from criminals that Chinese do. It happens occasionally (not very often) that foreigners are murdered or meet death under circumstances indicating foul play, and that Chinese police are unable to apprehend the perpetrators, or if apprehended that the Chinese courts fail to convict and punish them. As Mr. Arthur Henderson, British Minister for Foreign Affairs, said in response to inquiries in Parliament about the murder of some British missionaries by their Chinese servants, "failure of the police to apprehend and of the law to punish criminals is not unknown in other countries than China."

A case that attracted much attention was that of a youthful Englishman, Thorburn by name, who left his home in Shanghai early in June, 1931, and disappeared under peculiar circumstances. The young man

armed himself with one or two pistols and, without a passport although one is required, went by train, it is believed, to a station not far from Shanghai, where he left the train and started on a walking tour. While walking along the railway tracks he encountered some Chinese gendarmes whose duty is to patrol and guard the line and on them questioning him he became involved in an altercation with them. There is uncertainty as to what happened. The young man is supposed to have resisted arrest and there was a fight in which two of the gendarmes were mortally wounded and the foreigner was injured. He was overcome and put under arrest. What happened to him thereafter still remains a mystery. Local Chinese officials, and the gendarmes, deny knowledge of the matter. Investigations on the scene by British consular officers and by the Chinese Ministry for Foreign Affairs, assisted by a representative of the Ministry of War, have so far failed to learn more than that some foreigner resembling the descriptions of young Thorburn was arrested and detained in a prison near Soochow. One theory is that the foreigner died of his injuries and that the Chinese gendarmes, fearing to be arraigned and perhaps punished, are concealing his death. Another theory is that Thorburn is still alive and is confined somewhere, and his captors are, for those previously stated reasons, concealing his whereabouts.

This case has been the occasion of a number of indignant letters to foreign newspapers at Shanghai

written by foreigners, in which they go so far as to demand that the British Government send a military expedition against Nanking to force the Chinese Government to procure the release of Thorburn. A majority of those letters argue that it is ridiculous for the Powers to think of permitting exterritoriality to end while such things can happen in China.

It is plain, of course, that exterritoriality has no application to this case. Young Thorburn had exterritorial status when he set out on his adventurous trip and it did not help him any. The foreign missionaries who have been killed and kidnapped in China have had exterritorial status but that did not and could not protect them. If those foreigners or their surviving families have any remedy it is not by invoking exterritoriality, which does not apply to their cases, but lies in representations to the Chinese Government through diplomatic channels, and that can be done regardless of whether exterritoriality exists. The Chinese Government may discover and punish the persons who injured or killed young Thorburn, if he was killed, or they may in time apprehend and punish the bandits and communists who have lately killed and abducted missionaries, but if that is done it will be Chinese authority and Chinese law, and not exterritoriality, that brings the offenders to justice.

One might recite many instances when Chinese living in foreign countries have been assailed and massacred as showing that governments are not always able to assure the safety of foreigners within

their territory. The most recent case is the riots in Korea in July, 1931, when more than one hundred Chinese were killed and some three hundred Chinese were injured by Korean mobs. Japan is reputed to have a stable government that is able to afford protection to the lives and property of foreigners in that country and more foreigners were slain there in a few days than have been killed in China in that way during the twenty years of the Chinese revolution. Yet no one suggests that exterritoriality should be restored in Japan.

On the point of safety to the persons of foreigners in China the presence of foreign naval ships at Chinese ports and on the interior waters of China sometimes is confused with exterritoriality. The foreign warships are not for the purpose of enforcing exterritoriality. They might be in China whether exterritoriality obtains or not. Any nation has a right in international law to do what it can to protect its citizens abroad in times of stress and danger. A government at any time can dispatch naval forces to a foreign country, without that being construed as a hostile act, to rescue its citizens from peril due to disaster, revolution, turbulence, and a breakdown of the customary authority in that country. Even if foreign warships are withdrawn from China they can and probably will remain at nearby foreign ports whence they can reach China in a few days or a few hours steaming. One of the principal Japanese naval bases, at Sasebo, is within twenty-four hours steaming from

Shanghai for fast warships and the Japanese naval station at Port Arthur is within a few hours steaming to all ports of North China. The British colony of Hongkong lies adjacent to China and is thirty-six hours steaming from Shanghai. The American naval station in the Philippines is within thirty-six hours steaming from Canton and South China ports, less than three days from Shanghai and four to five days from North China ports. The abolition of exterritoriality need not affect the security of foreigners in China in so far as that depends on foreign naval protection.

VI.

Possible Conflict of Jurisdictions. The differentiation of exterritoriality in general from the small territorial areas in China that are under foreign municipal government has been indicated. The abolition of exterritoriality does not change the status of those administrations as to their municipal authority. But the end of exterritoriality in general may bring the Chinese Government and its juridical system into friction with foreign courts that continue to function within the foreign municipal areas.

One may suppose that the principal Pacific Powers whose exterritoriality treaties with China still have a few years to run, Great Britain and the United States of America, will after January 1, 1932, continue the British Supreme Court and consular courts in China and the United States Court for China and the consular courts as if nothing had happened and that

some other governments may follow their example. How will that affect the foreigners who are citizens of those Powers?

Presumably the Chinese Government will order its citizens, after January 1, 1932, not to resort, under penalty, to any foreign courts in China for any purpose whatsoever. It will order the Chinese courts not to recognize any process of those foreign courts. It may go further, logically, and debar from Chinese courts and penalize severely any Chinese lawyers who will practice in foreign courts. It can prohibit Chinese witnesses from testifying in foreign courts. If one foreigner obtains a judgment against another foreigner in a foreign court and the loser goes outside the foreign municipal area to evade the judgment the Chinese Government need not cooperate to make the judgment effective. If, let us say, an American citizen should kill a British subject within the Shanghai International Settlement and he should escape into territory outside of that Settlement the Chinese Government might not take cognizance of the offense and refuse to arrest the person, or if the person should be arrested outside the Settlement the case would have to be tried in a Chinese Special Chamber. If the Powers are obdurate in trying to continue exterritoriality in the foreign municipal areas the Chinese Government might regard that as a flagrant disrespect of its prerogatives and refuse to apprehend and extradite foreign offenders who escape to China after committing offenses elsewhere.

If Chinese cannot resort to a foreign court they will not be able, in one of the foreign municipal areas, to sue some foreigners who owe them money. A logical result of that situation is that the financial credit of foreigners with Chinese will be restricted. Foreigners whose governments continue exterritorial courts in China after January 1, 1932, may find themselves without legal means of suing Chinese even inside the foreign municipal areas if the Chinese Government as a retaliatory measure would not recognize those foreigners in a Chinese court.

One hesitates to believe that the governments of the principal Pacific Powers will allow those complications and that friction to arise by refusing to recognize and consent to the abolition of exterritoriality. Nor does it promise to solve matters for the Powers to menace China or to employ force to keep exterritoriality nominally alive for a few more years. That the system can be kept actually alive after the Chinese deny its legality and refuse to cooperate in making it effective, short of an extensive foreign military intervention, is difficult to conceive.

VII.

Foreign Municipal Areas. There are a number of small areas in China which have been set apart and put under the full or partial municipal administration of foreigners.* Some of those areas are

* For a list and a brief resumé of those areas, except at Shanghai, see Appendix J. The grab for concessions in China was an outgrowth of the "spheres of influence" policy of the Powers which reached its height about 1898 and was a cause of the outburst of anti-foreignism known as the "Boxer" uprising.

allocated to single foreign power; as the British, Japanese, French and Russian concessions at Hankow; the British, French, Russian, German, Belgian, Italian and Japanese concessions at Tientsin; the British concession at Kiukiang. At Hankow the British and Russian concessions have been rendited to China but the French and Japanese concessions remain. At Tientsin the German, Russian and Belgian concessions have been rendited to China but the French, British, Japanese and Italian concessions remain. The British concession at Kiukiang has been rendited and agreements for rendition of the British concessions at Weihaiwei and Chinkiang have been made. At Shanghai there are two foreign municipalities, one area comprising the former British and American concessions and now termed the International Settlement, and an exclusively French concession.

Those foreign municipalities do not rest on exterritoriality. They have a treaty status, or charters, all their own. In those which still exist the municipal authority is practically absolute within its precincts in respect to regulation of the ordinary conditions of life of the inhabitants. There is a superior law to the municipal regulations, just as the laws of the State of New York include the City of New York, and the laws of the United States include those of the State of New York. In China the local law of the foreign municipalities is subordinate to the foreign consular body, which in turn is subordinate to the foreign

legations, which are subordinate to their home governments.

Shanghai is unique among the cities of the world. In 1931 the port had a population of more than three millions of whom less than fifty thousand are foreigners. The combined International and French concessions had a population in 1931 of approximately 1,300,000, of whom less than 40,000 are foreigners. A compilation of foreigners at Shanghai made in 1930 showed 8,449 British, 3,149 Americans, 1406 French, 18,796 Japanese, 7,366 Russians, 1,430 Germans, and the remainder spread among nearly fifty other nationalities. The Russian population has grown since then. Of persons listed as British, French, Portuguese, American, and of other white nations, a goodly number are Asiatics and Eurasians. There are 1,842 East Indians.

Nearly ten thousand foreigners live in outlying districts of the Settlements termed "external roads areas", and many more live in adjacent Chinese territory. The purely Chinese parts of the port of Shanghai are administered by the municipality of Greater Shanghai and those districts encompass the foreign settlements on all sides. Passing from one jurisdiction to another at Shanghai often is like crossing from one side of Fifth Avenue in New York to the other side; there is nothing distinctive to indicate the difference except one might notice that police on one side of boundary streets wear slightly different uniforms from those of the police on the other side.

There are complications of course. Vehicles of sorts must be licensed separately in all of the three municipalities or remain in one of them. What is a misdemeanor in one jurisdiction may not be so in the one adjoining; one moves from one police authority to another by crossing a densely populated street or an undistinguishable boundary in the suburbs. Yet a stranger need never be conscious of those complexities and will seldom learn of them. To strangers Shanghai seems one large city under one government.

The history of Shanghai is deeply interesting but it is mostly irrelevant to the subject of exterritoriality. In 1929 the Shanghai Municipal Council, the governing body of the International Settlement, employed a British jurist, the Hon. Justice Richard Feetham of South Africa, to visit Shanghai and make a report on conditions there. Justice Feetham's report was published in 1931 and contained more than 300,000 words. The larger part of the report is historical and, as Justice Feetham himself remarked, how Shanghai arrived where it is is not very important now; the question to be solved is to find a satisfactory status for its future.

Yet some facts about Shanghai have a relation to and bearing on the complexities that will attend the termination of exterritoriality and the eventual rendition of the foreign municipalities to China. For that those municipalities are temporary and must be rendited some time is admitted on all sides; Judge Feet-

ham's report to his employers, the Municipal Council of the International Settlement, recognized that.

If one asks a foreign resident of Shanghai how that important place was created the reply often is: "The foreigners made it." And they may add: "And precious little thanks they get from the Chinese for having done that."

Did foreigners build Shanghai? In fact they did not. The Chinese made Shanghai but foreigners showed the way and to a large extent managed the job. Without the initiative and management of foreigners the city might never have got built and surely without them the port would not have progressed as it has. When the port was opened to foreign trade it had less than 100,000 inhabitants.

What made Shanghai grow? A city must have people to live and work there or it cannot grow, and of the people who live and work in the area of the port about 98 per cent. are Chinese. Of the people who live, work and transact business in the two foreign municipalities about 97 per cent. are Chinese. If the Chinese should move out of the foreign municipalities what would happen? And, conversely, if the Chinese never had moved in how could the settlements have grown?

To whom does this modern Shanghai belong? There are two answers to that, one on the point of sovereignty and one on the point of property ownership. The sovereignty is that of China. It is not feasible

now to give accurate statistics about property ownership at Shanghai because of the complicated system of registration and taxation in the Settlements and the practice of putting Chinese property in the names of foreigners, but an impartial estimate is that Chinese own 80 per cent. of the total valuation and pay 90 per cent. of the taxes. Yet it was not until 1928 that three Chinese designated as "counsellors" were admitted to the Municipal Council of the International Settlement along with the nine foreign members of the Council. In 1930 a resolution to increase the number of Chinese counsellors to five was voted down at the annual meeting of ratepayers in Shanghai but that vote was rescinded at a special meeting held afterward. That is mentioned as showing the unyielding attitude of the foreign residents toward efforts of the Chinese to share in the municipal government.

The following summary of important dates in the history of the foreign settlements at Shanghai is taken from Justice Feetham's report:

1842, 29th August: Treaty of Nanking signed. Article II reads:—

> "His Majesty the Emperor of China agrees that British Subjects, with their families and establishments, shall be allowed to reside, for the purpose of carrying on their Mercantile pursuits, without molestation or restraint at the Cities and Towns of Canton, Amoy, Foochow-fu, Ningpo and Shanghai, and Her Majesty the Queen of Great Britain, etc., will appoint Superintendents or Consular Officers, to reside

at each of the above-named Cities or Towns, to be the medium of communication between the Chinese Authorities and the said Merchants, and to see that the just Duties and other Dues of the Chinese Government as hereafter provided for, are duly discharged by Her Britannic Majesty's Subjects."

1843, 17th November: Shanghai opened to Foreign Trade as a Treaty Port.

1845, 29th November: First Land Regulations promulgated containing partial definition of original area of Settlement.

1848, 27th November: Area of Settlement extended to Defence Creek.

1849, 6th April: French Settlement boundaries defined.

1851: Beginning of Taiping Rebellion.

1853, 12th April: Decision of meeting of foreign community, at which Consuls of three treaty powers—England, France and the U.S.A.—were present, to organise Volunteer Corps for protection of Settlement.

1853, 7th September: Rebels, "Small Swords," occupied Chinese City.

1854, February: Consul of U.S.A. established Consulate in Hongkew, east of Soochow Creek.

1854, 4th April: Battle of Muddy Flat, in which British and American naval forces, with Settlement Volunteers, attacked camp of Imperial troops under General Keih, encamped near western Boundary of Settlement in order to enforce demand for removal of camp to a safe distance from Settlement Boundary.

1854, 11th July:	Public meeting of foreign residents in the Settlement under chairmanship of British Consul, Mr. Rutherford Alcock, adopted new Land Regulations.
1855, 17th February:	Rebels evacuated City.
1855, 24th February:	Taotai's proclamation setting forth conditions subject to which Chinese would be permitted to reside in the Settlement, and requiring them to conform to Land Regulations and contribute to any general assessments.
1858, 26th January:	Treaty of Tientsin.
1860, June:	Taipings take Soochow.
1860, 17th August:	First Taiping attack on City and Settlement.
1862, January:	Second Taiping attack on Settlement, from direction of Woosung, which reached a point one and a half miles from the British Consulate.
1862, 1st May:	Establishment of separate Council for administration of French Concession.
1862, August:	Third Taiping attack on Settlement which reached Bubbling Well.
1863, 21st September:	Agreement made for amalgamation of British and American Settlements.
1863, 4th December:	Soochow taken from Taipings by Gordon's army.
1864, 1st May:	Establishment of Mixed Court in Settlement presided over by Deputy of Shanghai Magistrate with Consular Assessors in certain cases.
1864, July:	Nanking retaken by Imperial forces and Taiping Rebellion crushed.
1865:	Establishment of Kiangnan Arsenal at Hongkew by Tseng Kuo Fan, Viceroy at Nanking, and Li Hung Chang: (subsequently removed to Lunghwa, 1869).
1865:	Establishment of H.B.M.'s Supreme Court for China.

1866, March:	Revision of Land Regulations by Ratepayers' Meeting.
1866:	Formation of Volunteer Fire Brigade in Settlement.
1869, September:	New Land Regulations approved by Ministers in Peking.
1870:	Control of Settlement Volunteer Force handed over to Council.
1871:	Council made first grant of Tls. 200 to Chinese Hospital (present Lester Hospital for Chinese).
1872:	Council made first grant of Tls. 2,000 to Foreign Hospital (Shanghai General Hospital).
1874:	Serious riots in French Concession owing to decision to construct road through cemetery belonging to Ningpo Guild.
1876, 13th September:	Chefoo Convention.
1880, 31st August:	Agreement for provision of water supply for Settlement signed.
1880:	First grant in aid to Foreign School made by S.M.C.
1889:	Erection of first modern cotton mill in Shanghai.
1890:	Council took over existing Eurasian School (Thomas Hanbury School) and converted it into first Municipal School for Foreigners.
1893:	Purchase of Electric Light undertaking by Council of Settlement.
1894-5:	War between China and Japan.
1894, 25th January:	Japan agreed to regard Shanghai as outside the sphere of warlike operations.
1896:	Treaty of Shimonoseki between China and Japan.

1896, 21st July:	Supplementary Treaty of Commerce between China and Japan signed at Peking giving right to carry on trade, industries and manufactures at all Treaty Ports.
1897, 5th April:	Wheelbarrow riot in Settlement as a result of decision of Council to increase rate of Wheelbarrow licenses.*
1897, 10th May:	First Foreign (British) cotton mill opened in Shanghai.
1898:	Railway line to Woosung opened.
1898:	Dr. Stanley organised Municipal Public Health Department.
1898:	Amendment of Land Regulations and Bye-laws approved.
1899, July:	Extension of boundaries of Settlement.
1899:	Extension of boundaries of French Concession.
1900, 13th March:	Ratepayers' Meeting sanctioned first grant for Chinese Education in Settlement, under arrangement with group of Chinese residents who contributed the funds for cost of building.
1900:	Boxer outbreak. Agreement between Foreign Consuls and Viceroys of Central Provinces, under which Viceroys promised to prevent spread of Boxer Rebellion in provinces under their jurisdiction, provided Foreign military operations confined to North. Defence of Settlement in hands of Volunteers pending arrival of Foreign troops.
1900, 17th August:	Foreign troops garrison Settlement.
1901, 7th September:	Conservancy Board protocol.
1902:	Foreign garrison withdrawn.
1904:	First Municipal School for Chinese opened under arrangement made in 1900.

1905, 8th December:	Mixed Court riot resulting from agitation over question of accommodation of female prisoners and posting of Municipal Police on duty in Mixed Court.
1907:	Addition of Chinese Company to Shanghai Volunteer Corps.
1908:	Shanghai Nanking Railway completed.
1910, 10th November:	Plague Riots in Shanghai resulting from agitation against proposed enforcement of Public Health Bye-laws for prevention of plague.
1911, 9th October:	Outbreak of Revolution.
1911, 3rd November:	Chinese City of Shanghai fell into hands of Revolutionaries: Volunteers mobilised and measures taken for defence of Settlement.
1911, 11th November:	Mixed Court taken over by Consular Body.
1912, 1st January:	Establishment of Republic of China.
1913, 26th July:	Fighting in neighbourhood of Settlement between Peking government forces and Kiangsu rebels. Consular Body issued declaration of neutrality of Settlement, Chapei and Soochow Creek. Volunteers mobilised. Naval Guards from British, German, Austrian and Italian warships, landed for defence of settlement.
1914, 8th April:	Chinese-French Convention provided for extension of boundaries of French Concession; and for appointment of two Chinese to advise the French Municipal Council.
1915:	Shanghai-Hangchow Railway completed.
1917, 14th August:	China declared war on Germany and Austria-Hungary.

1918, 16th-19th July:	Riots in Hongkew owing to friction between Japanese and Chinese.
1919, 1st May:	Fire Brigade in Settlement which had hitherto been a Volunteer Brigade, established on professional basis.
1919, June:	Strikes and anti-Japanese boycott, Volunteers mobilised to protect property of Public Utility Companies and aid in preserving order.
1920, 7th April:	Appointment of Chinese Advisory Committee approved by Ratepayers' Meeting.
1920, 14th October:	Formation of Chinese Ratepayers' Association.
1924, August—end of 1925:	Kiangsu-Chekiang War
1924, 9th September:	Council declared State of Emergency and mobilised Volunteer Corps; naval forces landed from British, American, Japanese and Italian ships forming defence cordon round Settlements.
1925, January:	Volunteers mobilised to aid in disarming and interning 10,000 Chinese soldiers who surrendered either to French or to Settlement authorities.
1925, 30th May:	May 30th incident. Labour troubles which started in February culminated on May 30th in procession and attack upon Louza Police Station, resulting in Police firing on mob, killing 12 and wounding 17. Further disturbances ensued followed by general strike and anti-British boycott. Chinese Advisory Committee resigned. Strikes ended in September. International Judicial enquiry by American, British and Japanese Judges held in October.
1925, 2nd June:	Failure to carry Child Labour bye-law at Ratepayers' Meeting.

1926, 14th April:	Adoption by Ratepayers' Meeting of resolution approving addition of three Chinese members to the Council.
1926, 4th May:	Directorate of Woosung and Shanghai established by General Sun Chuan Fang, under Dr. V. K. Ting as first Mayor.
1927, 1st January:	Rendition of Shanghai Mixed Court and establishment of Provisional Court.
1927, January, February and March:	Landing of British, American, French, Spanish, Italian and Japanese troops for defence of Settlement.
1927, 21st March:	Shanghai Municipal Council declared State of Emergency. Nationalist Forces occupied Chinese City of Shanghai. Fighting in neighbourhood of Settlement during March resulted in defeat of Northern Forces of whom 3000 were interned in Settlement.
1927, 7th July:	Municipality of Shanghai established and Mayor appointed.
1928, 20th April:	Chinese Councillors first took their seats.
1928, 1st June:	Parks opened to Chinese on same terms as Foreigners.
1929, 17th April:	Ratepayers pass Resolution authorising sale of Municipal Electricity Department.
1930, 1st April:	Rendition of Shanghai Provisional Court and establishment in Settlement of District Court and Branch High Court.
1930, 2nd May:	Number of Chinese Councillors increased from three to five.

The points in that synopsis that relate now to the problem of Shanghai's future are not those occasions when civil wars and revolution endangered the Settlements (in fact the Settlements and their residents

escaped through all of them with but slight damage and few personal casualties), but are the occasions when extensions of the foreign municipal areas were made and those moves whereby certain prerogatives and functions were usurped by the foreigners. Of those usurpations, or extra-legal moves, the most significant now are taking control of the Mixed Court in November, 1911 (year of the revolution), and oblique extension of the foreign municipal areas by construction of municipal roads outside the Settlements' boundaries. The Mixed Court, it should be said, was the court in Shanghai where cases of Chinese defendants in civil suits and Chinese offenders in criminal and misdemeanor cases were tried.

The Shanghai Mixed Court was created in 1864. It was restored to Chinese authority and renamed the Shanghai Provisional Court in 1927 after nearly fourteen years of foreign control. On April 1, 1930, foreign participation in the court was ended and the court was reorganized as a District Court of China with a Branch High Court.* That rendition was strongly opposed by conservative elements of the foreign population. The following is from the Annual Report of the Shanghai Municipal Council for 1930, quoting the address of the Chairman:

Provisional Court and Shanghai District Courts

"On February 17, 1930, the text of the agreement relating to Chinese courts in the International Settlement was signed at Nanking and immediately made public. The publication of the text gave rise to much acrimonious newspaper comment, disturb-

* *See* Appendix I.

ing in no small degree to the public mind under existing political conditions. When the Provisional Court agreement came into effect on January 1, 1927, gloomy forebodings were current but the passage of time has shown that the calamitous results that were predicted have by no means been so serious as were anticipated. It may be recalled that at the annual ratepayers meeting in April, 1929, the Chairman of the Council commented unfavorably upon the working of the Provisional Court as a whole up to that time. It is only fair, however, to state that during the past year there has been a marked improvement in the work of the court and that, at the present time, conditions affecting the court are by no means so bad as the public has been led to believe. There appears to be a widespread impression that the prevalence of serious crime in the Settlement is due primarily to the inadequacy of sentences imposed by the court and in a lesser degree to general inefficiency and maladministration. To those of you who care to acertain the facts, I would commend a perusal of that section of the Annual Report of the Municipal Council for the year 1929 relating to the Police Department which may be something in the nature of a revelation.

"During the year 1929 the total number of cases prosecuted in the Provisional Court by the Municipal Police was 116,643. Of this number 22,699 were major and minor criminal cases. In the prosecution of those cases 20,441 persons were convicted and 2,258 were acquitted. This shows that in 90 per cent. of the cases prosecuted in the Provisional Court by the Municipal Police, the accused were convicted. These results compare favourably with those of the Courts of other great cities of the world having similar comprehensive jurisdiction. On the whole, the judges of the Provisional and District Courts appear to be conscientious and devoted to their work when free from interference on the part of the executive officials of the Provincial and Nanking Governments.

"The friction which continually arises between the Council and the Chinese Courts is not so much due to the manner or methods of the Courts in the actual hearing of criminal prosecutions or the results obtained, as it is to a fundamental difference between the foreign and Chinese conception of juridical principles. In most foreign countries having a modern judicial systems, the law courts are independent of the executive branch

of the government and cannot be used as an instrument for making effective the executive or administrative functions of government. Under such a system the person and property of the individual are protected against arbitrary, capricious and illegal acts on the part of government officials. Although one of the reforms to which the Nationalist Government is publicly committed is the creating of modern law courts conforming generally to modern conceptions of jurisprudence, it has consistently refused to place either the Provisional Court or the Court which supersedes it upon a footing of freedom from interference on the part of executive officials of the Chinese Government. The result is that the Council, having control of the Police power in the Settlement, has been at various times in conflict with the Provisional Court to prevent it being used as an instrument to enable the Chinese government officials to interfere with the municipal administration of the Settlement. The persistence of the Chinese in the policy of refusing to free their courts from executive interference is one of the strongest possible arguments against the premature relinquishment of extraterritorial rights by the Treaty Powers.

"Under the Provisional Court Agreement the foreign Deputies had no actual power, but merely the right to lodge a protest. Consequently the Deputies were never in a position to prevent attempts by the Courts to exercise executive functions. Contrary to the generally accepted belief, only the Police, acting under the direct orders of the Council, and not the Deputies, could take action in the case of attempts by the Court to exercise executive functions which interfere with or derogate the rights of the Council. The Chairman and Director General of the Council, who were consulted by the foreign delegates appointed to enter into negotiations regarding the Provisional Court Agreement, under circumstances which have been known to the public, were informed among other things at the beginning of the discussion that it would be impossible under any new agreement which might be concluded to secure Deputies upon the same basis or status as stipulated in the Provisional Court Agreement. The delegates requested concrete suggestions as to what provision could be made to solve the problem of the Chinese to Deputies. The Chairman and Director General, realizing the importance of the relation of the powers of the Police to the whole problem of the Provisional and new Courts,

and particularly with regard to the persistent efforts to exercise executive functions, did what they could do under the circumstances to assist in securing a new agreement which would concentrate in the hands of the Police as much necessary power as could be obtained.

"It should be obvious to anyone familiar with the working of Chinese Courts that information on the part of the Council through its Police regarding what these Courts are doing from day to day is the keystone of the whole situation. Therefore the suggestions of the Chairman and Director General to the delegates regarding the new agreement were made with the object of securing an agreement which will prevent, in so far as possible, the new Court functioning *in camera.*

"On April 1 the Special District Courts came into being and already incidents have occurred which indicate that the future relations of the Council with these courts will in all probability be no less difficult than they were with the old Provisional Court."

The "acrimonious newspaper comment" and exaggeration of bad conditions referred to in that report was published in foreign newspapers at Shanghai that voice the foreign "diehard" viewpoint and are the organs of the comparatively small group of foreigners who control, with as much power as Tammany has in New York City and as the political "rings" which dominate other American cities have, the governments of the foreign municipalities. It was and still is a definite purpose of those interests and their press organs to represent Chinese participation in municipal affairs and processes of the Chinese courts in the worst light, in order to prevent changes in the form of government there and above all to delay and if possible prevent rendition of those areas to the Chinese Government.

VIII.

Shanghai and its Future. Foreigners who live inside the Settlements at Shanghai are always under two forms of government and in some cases they are under three kinds of administration. In the International Settlement foreigners are, first, under the law of their home governments if they have exterritorial status and conjointly under the law of the municipality, and under the municipal law of the Settlement and the law of China if they are non-exterritorial. If, as is often the case, persons not of French nationality do business and own property in the International Settlement and reside in the French concession, or vice versa, that places them under still a third jurisdiction in some of their affairs and activities.

Take the case of an American who has his business in the International Settlement and lives in the French concession. He pays taxes in both municipalities and can vote at municipal elections in both of them; he may be a member of the municipal governments of both concessions. The American community center consisting of a church, a school with dormitories, an athletic field and an auditorium, is in the French concession. The Columbia Country Club (American) is in Chinese territory outside the settlements. The American Club is in the International Settlement. Thus many Americans in Shanghai pass every day from one jurisdiction to another in their ordinary

business and pleasures. That is so of all foreigners there.

Foreigners have been living at Shanghai until lately under the laws of some twenty nations and conjointly under the municipal law of three separate municipalities. Abolition of exterritoriality will end some of those complexities but only rendition of the foreign municipal areas to the Chinese Government will terminate the almost endless chain of overlapping jurisdictions.

Probably is it inevitable that a complex form of government will give occasion for and lend itself to evasions and abuses. "In many laws lies the rogue's opportunity" is a broad translation of a Chinese proverb. No other place on earth has so many kinds of law as Shanghai.

The area of what is now the central part of the International Settlement was allotted originally to the British and American governments and for a time was under their exclusive authority. Those nations have almost the same political and social ideas and jurisprudence. On fundamentals of human conduct and what is thought to be right and what is believed to be wrong, and what is proper and what is improper, British and Americans think very much alike. When the Settlement took on an international character and some twenty nations were given equal footing and consular status there complications multiplied. The Christian nations have similar ways of dealing with

major crimes and similar ideas concerning property, marriage, and the fundamental relations of society; but even in these matters there are as many differences, perhaps more, among laws of the foreign nations at Shanghai as among laws of the States in America. A good comparison is to imagine a city like Chicago having the laws of twenty States simultaneously in force and in some degree administered by as many different States courts.

Results of that situation at Shanghai can be illustrated by citing particular instances. Gambling is publicly frowned on by British and American society (but privately indulged in by nearly everyone) and in those countries gaming places are prohibited; in America even lotteries are against the law. But a different view of this matter is held in many states of Europe and South America. The opiate question is an international sore spot. For years an effort has been made to rid China of the opium vice and the American Government has tried to obtain an international agreement to suppress the drug traffic. But there the United States differs from Great Britain, whose government in India derives a revenue from opium and is reluctant to give it up. All will remember the constant and so far futile efforts of nations to regulate and confine the international commerce in arms. This is a matter of especial interest to the Chinese Government because the recalcitrant Chinese militarists obtain arms and munitions from abroad. In the International Settlement at Shanghai,

where British and American ideas and customs predominate, gambling places and prostitution are prohibited by the municipal bye-laws, but those who know how hard it is for the police of cities in America to suppress gambling and prostitution will understand how much harder it is to do that where those things are legal under the laws of several nations that have consular jurisdiction.

The foregoing items are mentioned to illustrate abuses inherent with the government of the foreign municipalities at Shanghai. In view of international amenities I shall not particularize, but there is little doubt that consuls of some nations at Shanghai have used their offices to protect illicit and illegal, under the bye-laws, traffics and occupations. One could cite innumerable cases of illicit occupations and evasions of law getting under the wing of foreign consular jurisdictions. Smuggling of drugs and arms and many other evasions of both Chinese and foreign law find a shield and protection in exterritoriality.

Complications that give a good deal of trouble are those arising from the theoretical neutrality of the foreign municipal areas and the use of them as places of political asylum by Chinese revolutionary plotters against the Government. Defeated and deposed militarists and officials take refuge in the foreign municipal areas where they can scheme and plot to return to power and where the Chinese Government cannot arrest them. Hundreds of defeated militarists and cashiered officials live in the foreign concessions at

Shanghai, where they invest their wealth in homes and property and put their funds in foreign banks. At times in the past the governments of foreign municipalities in China have exerted their influence in favor of a Chinese military leader or political group, but that practice is discredited and almost discontinued now.

What are termed "external roads areas" at Shanghai have created a minor issue that is related to exterritoriality and to the question of obtaining a satisfactory government there. When the foreign municipalities were at last unable to get extensions of their boundaries from Chinese Government they resorted to an oblique method of embracing additional territory. Agents would be sent among the land owners of districts adjoining the settlements to purchase strips of land, then along those strips roads would be laid out and made. Then the foreign municipality would send out its police to patrol those roads. The municipal lighting and power and telephone systems were extended to residents in the localities embraced by those "external area" roads and if people who wanted those facilities would not pay the municipal taxes the service would be cut off. People found it easier to pay the taxes than to dispute the right of the foreign municipality to tax them and to police the roads and the territory adjoining the roads. In that way an area of about twice the size of the legitimate International Settlement was brought within its quasi-authority. In late years the Chinese

Government has flatly denied the right of the International Settlement to exercise authority in those areas and clashes of jurisdiction are frequent, resulting sometimes in unpleasant incidents.

Dr. Manley O. Hudson, professor of international law at Harvard University and associated with the League of Nations, visited Shanghai in 1927 and studied conditions there. On departing he said: "Much stress is now laid on the international character of the Settlement. But my study of the situation has led me to think that its control is more international in name than in fact. The Consular Body has not enough authority to be called a real governing power. And it seems to me inevitable that the present degree of irresponsibility in the local government should not be permitted to continue indefinitely. It is responsible neither to the residents of Shanghai nor to the governments of the Powers."

Some consequences of the abolition of exterritoriality are indicated previously in this work. But as exterritoriality in general is apart from the status of the municipal areas at Shanghai the question of finding a satisfactory form of government for that place requires separate consideration. By that is meant a form of government for the transition period from the present until the foreign municipal areas are returned to the full control of the Chinese Government.

The laborious report of Justice Feetham, employed by the Municipal Council of the International Settle-

ment, found no solution to that question except to continue foreign control of the Settlement (the French concession was not included) for several decades, with some minor reforms of administration. His recommendations are so far from anything the Chinese Government is likely to accept that they offer no advance toward a solution. There is no likelihood, one may say there is no possibility that the Chinese Government will consent to continue foreign control of the heart of Shanghai for twenty, thirty or forty years and grant a new charter to that effect. There is no likelihood that the Chinese Government and Chinese residents of the Settlement will consider the participation allotted to them by Justice Feetham as being adequate. As to the outside roads areas, the gist of Justice Feetham's report is that although authority of the Municipal Council over those roads and those areas is without a strictly legal basis, a suitable arrangement will be to put them under a joint Chinese and foreign authority; which would be to convert an illegal and usurped foreign position into one having a legal authority jointly with the Chinese Government. The likelihood of the Chinese Government agreeing to that suggestion is remote.

It may be interesting in that connection to quote from a memorandum I wrote at Washington, dated December 12, 1929. The memorandum was written hurriedly, in less than an hour, after a talk with persons in the American Government who wanted to get an idea of a formula for rendition of the Inter-

national Settlement at Shanghai that the Chinese Government might possibly accept.

Tentative Formula for the Change

"1. The Powers to agree to terminate exterritoriality throughout all of China's territory.

"2. China will agree to the creation of a joint Chinese-Foreign administration of the existing foreign residential settlements at Shanghai, Tientsin and some other places for a stated term of years, after which those areas will be restored fully to China's authority and administration.

Ad Interim Government for the Areas

"While this memorandum will not attempt to state in detail the character of a Sino-foreign administration that would be established in Shanghai and other so-called foreign concessions under this formula, its nature suggests something like a 'commission' government composed of Chinese and foreigners in about equal number. For instance, each of the four effective Powers (Great Britain, Japan, the United States and France) might delegate one member of the Commission (the Consuls General of those Powers could serve, or citizens of those nationalities), the Chinese Government or local Chinese residents to appoint or elect four members, and the Chairman (or city manager) to be a foreigner appointed by the Chinese Government and subject to removal and replacement by that authority.

"Joint Chinese and foreign courts for cases involving foreigners.

"Employment of both Chinese and foreigners in the administration and police on a policy of replacing foreigners with Chinese as rapidly as may be feasible.

"All courts in those areas to apply and enforce on all persons the laws of China.

Comment on the Preceding Formula

That the foreign settlements in China are a serious obstacle to China's national unification, a center of revolutionary activities, a focus of various forms of smuggling, and are places without counterpart in civilized government, is generally recognised. While almost a score of foreign nations participate now in the governance of the Shanghai settlements, only the four powers

previously mentioned can exercise real influence in changing the status. The United States and Japan have no territorial foothold at Shanghai but those Powers participate in the government of the International Settlement and assist in its protection in emergency.

"The position of the French settlement is technically a matter between China and France. It is evident, however, that no single one of those four Powers will for long be able to hold the status quo separately in the event of the other Powers giving up the position. France inevitably will be forced, even if unwilling, to do with the French concession what the other powers do in the International Settlement. Realizing this it is possible for these four Powers to reach an agreement among themselves to create a single administration of the combined French and International Settlements and to make a joint treaty with China to that effect.

"It is assumed in this formula that, with the exception of the Chairman or City Manager, the members of the Commission will serve without salary, as is the case with the existing administrations. The salary of the Chairman, as now, will be met out of municipal revenues.

"In the opinion of the writer of this memorandum, to have for a few years one or two eminent foreign justices aiding the Chinese justices in applying, interpreting, and enforcing the laws of China within these very limited areas will be of great value to Chinese Government in adjusting Chinese modern law and jurisprudence to the forms of the modern world.

"An advantage of this plan is that it will place the foreign settlements in China under the same laws and procedure as all other parts of China and will do away with the present hybrid and confusing system. This should be to the advantage of foreigners and foreign business as well as to the Chinese. That part of the port of Shanghai within the boundaries of the foreign settlements will have one set of laws instead of twelve or fifteen different sets of statutes and, with the possible exception of some municipal regulations, have the same laws as the Chinese parts of Greater Shanghai.

"The period of continuance of such a form of administration for the foreign settlements is a matter of agreement between China and the Powers. It is assumed that neither the Chinese

Government nor the Powers wish to hinder the growth of the ports of Shanghai, Tientsin, et al, nor is it desirable that property and other values should be too much disturbed. The previous formula should make the transition comparatively easy. This form of administration might remain in effect for five or ten years, when the complete authority would revert automatically to the Chinese Government and all participation of foreigners in the administration would end.

"If the French Government (as is probable) will refuse to consolidate its 'concession' with the International Settlement at Shanghai or at Tientsin and Hankow the same formula can be applied separately to the areas under French control. Consolidation will simplify the situation."

Copies of that memorandum were handed at once to the Chinese Minister at Washington and to the State Department and other copies sent to Nanking. Chinese who read the memorandum then demurred to some of its suggestions but were not against it as a whole. One objection of the Chinese was to a foreign city manager; they insisted that the Chairman of the Council, or city manager, ought to be a Chinese, with perhaps a foreign Vice-Chairman or adviser. I pointed out to the State Department then that while in its anxiety to end exterritoriality soon the Chinese Government might be persuaded to accept such a formula, the passage of time without action by the Powers would make acceptance of that or a similar formula more difficult. The term of years when such an administration would continue before complete rendition would be an arguable point, but there should not be much difficulty in agreeing on the other provisions in principle. The details could be worked out in accordance with that principle. I still think that

formula offers as good a chance for agreement between China and the Powers about the future of Shanghai as any that have been put forward.

In the writer's opinion Shanghai is destined to become one of the largest and most important cities in the world. Many persons predict that its population will exceed ten millions in another twenty-five years. Situated at the mouth of the Yangtze River in the middle of China's extensive coastline the port is to China what New York is to the United States and London is to Great Britain. It is inconceivable that Chinese will be content to let the city remain for long under any degree of foreign authority.

IX.

It should be understood that exterritoriality and other infringements on China's sovereignty, such as foreign troops in China, foreign warships in China's waters, the privilege of foreign merchant ships to navigate China's coastal and inland waterways and trade at China's interior ports, the foreign residential areas at important cities in China, to mention some of the greater aggravations, cannot be continued much longer by the Powers except by the use of force. No Government of China henceforth will consent to those conditions.

It might not be essential to include the foreign residential areas and other matters in a discussion of exterritoriality were it not for the diplomacy that seeks to use exterritoriality as a trading-point to

prolong or retain foreign authority at some places and to hold some special privileges. Yet the Powers agreed at the Washington Conference that they would not make the abolition of exterritoriality "either directly or indirectly dependent on the granting by China of any special concession, favor, benefit, or immunity, whether political or economic."

In respect to the presence of foreign warships in China and their patrolling of rivers and lakes (a duty that frequently brings them into armed collision with the Chinese) it may be questioned if the Powers are justified or even wise in assuming police work that should be done by the Chinese Government. A sounder policy and one more consonant with modern international amenities would be to withdraw the foreign military and naval forces and put squarely on the Chinese Government the responsibility for keeping order within its territory. The safety of foreigners in China need not be endangered thereby and it is possible that their position would be improved. It should be remembered that all foreigners in China do not live in foreign concessions and where foreign military and naval forces can defend and succor them, and those persons are endangered at times by anti-foreign feeling aroused among Chinese for any reason whatsoever.

Secretary of State Henry M. Stimson stated in 1931 that henceforth it will not be the policy of the American Government to use its military and naval forces

to protect property or collect debts in foreign countries or to maintain its forces in foreign countries to do police work that should devolve on those governments. The application of that statement to some conditions in China is obvious.

It is hard to imagine that any of the Powers will employ force to retain exterritoriality in China. If they do not intend to do that an adjustment of the question in its remaining phases by negotiation appears to be the only practicable course.

APPENDIX A.

Provisional Constitution of the Republic of China adopted by the National People's Convention at Nanking on May 12, 1931.

PREAMBLE.

The National Government, in order to reconstruct the Republic of China on the basis of the Three Principles of the People and the Constitution of Five Powers, which forms the underlying principle of Revolution, having now brought the Revolution from the Military to the Political Tutelage Period, deems it necessary to promulgate a *Yueh Fa* (Provisional Constitution) for general observance, so that the realization of Constitutional Government may be accelerated and political power restored to a popularly elected government; and further, in pursuance of the Last Will of our late Leader, has called at the National Capital the *Kuo-Min-Hui-I* (National People's Convention).

The said National People's Convention do hereby enact and ordain the following Provisional Constitution for enforcement during the Political Tutelage Period:

CHAPTER 1.—GENERAL PRINCIPLES.

Article 1.—The Territory of the Republic of China consists of the various provinces and Mongolia and Tibet.

Article 2.—The Sovereignty of the Republic of China is vested in the people as a whole.

All persons who, according to Law, enjoy the Nationality of the Republic of China shall be Citizens *(Kuo-Min)* of the Republic of China.

Article 4.—The National Flag of the Republic of China shall have a red background with a "blue sky and white sun" in the upper left corner.

Article 5.—Nanking shall be the National Capital of the Republic of China.

CHAPTER 2.—RIGHTS AND DUTIES OF THE PEOPLE.

Article 6.—Citizens *(Kuo-Min)* of the Republic of China shall be equal before the Law, irrespective of sex, race, religion or caste.

Article 7.—Citizens of the Republic of China shall, according to the stipulation in Article 8 of the "Outline of National Reconstruction," enjoy in all completely autonomous districts *(Hsien)* the rights of Election, Initiative, Recall and Referendum as provided by Article 9 of the "Outline of National Reconstruction."

Article 8.—Except in accordance with Law, no person *(Jen-Min)* shall be arrested, detained, tried or punished.

When a person is arrested or detained or on a criminal charge, the organ responsible for his (or her) arrest or detention shall send him (or her) to the competent Court for trial not later than 24 hours. The party concerned may himself petition, or some other person may petition on his behalf that he be brought (before the Court) for trial within 24 hours.

Article 9.—Except in accordance with Law, no person other than those in active military service, shall be subject to trial by a military court.

Article 10.—Except in accordance with Law, no private houses of the people shall be subject to forcible entry, search or sealing.

Article 11.—All persons shall have the liberty of conscience.

Article 12.—All persons shall be free to choose and change their residence: such freedom shall not be denied or restricted except in accordance with Law.

Article 13.—All persons shall have the right to the privacy of correspondence and telegraphic communications: such right shall not be denied or restricted except in accordance with Law.

Article 14.—All persons shall have the freedom of assembly and formation of associations: such freedom shall not be denied or restricted except in accordance with Law.

Article 15.—All persons shall have the liberty of speech and publication: such liberty shall not be denied or restricted except in accordance with Law.

Article 16.—Except in accordance with Law, no private property shall be sealed or confiscated.

Article 17.—The exercise of the right of ownership by any private owner of property, in so far as it does not conflict with the public interest, shall be protected by Law.

Article 18.—Where public interest necessitates, the property of the people may be expropriated in accordance with Law.

Article 19.—All persons shall have the right to inherit property in accordance with Law.

Article 20.—All persons shall have the right of petition (to the Government).

Article 21.—All persons shall have the right to institute judicial proceedings at the Courts of Justice, in accordance with Law.

Article 22.—All persons shall have the right to submit petitions, and institute administrative proceedings (at the Administrative Court) in accordance with Law (for the redress of wrongs done by Government Administrative Organs).

Article 23.—All persons shall have the right to compete in Civil Service Examinations in accordance with Law.

Article 24.—All persons may, according to Law, hold public posts.

Article 25.—All persons shall have the duty of paying taxes in accordance with Law.

Article 26.—All persons shall have the duty of undertaking military service and of performing compulsory labour (for the State) in accordance with Law.

Article 27.—All persons shall have the duty to obey the measures taken by Government Organs in the performance of their duties according to Law.

CHAPTER 3.—ESSENTIALS OF POLITICAL TUTELAGE.

Article 28.—The political policies and programs during the Period of Political Tutelage shall be in accordance with the "Outline of National Reconstruction."

Article 29.—The system of District Autonomy shall be enforced in accordance with the provisions of the "Outline of National Reconstruction" and the "Law governing the Institution of District Autonomy."

Article 30.—During the Period of Political Tutelage, the National Congress of Kuomintang delegates *(Kuo-Min-Tang-Tsuan-Kuo-Tai-Piao-Ta-Hui)* shall exercise the governing power on behalf of the National People's Congress *(Kuo-Min-Ta-Hui)*. During the recess of the National Congress of Kuomintang delegates, the Central Executive Committee of the Kuomintang Election, Initiative, Recall and Referendum.

Article 31.—The National Government shall train and guide the citizens in the exercise of the four political rights of election, initative, recall and referendum.

Article 32.—The National Government shall exercise the five governing powers, namely, executive, legislative, judicial, examination and supervisory.

CHAPTER 4.—PEOPLE'S LIVELIHOOD.

Article 33.—In order to develop the people's economic welfare, the State *(Kuo-chia)* shall afford every encouragement and protection to the productive enterprises of the people.

Article 34.—In order to develop rural economy, to improve the living conditions of farmers as well as to promote the well-being of peasants, the State shall take active steps for the carrying out of the following measures:

1. Reclamation of all waste land in the country and development of farm irrigation;

2. Establishment of agricultural banks and encouragement of co-operative enterprise in the rural communities;

3. Enforcement of the (Public) Granary System for the prevention of famine and other calamities and replenishment of the people's food supplies;

4. Development of agricultural education with special emphasis on scientific experiments, extensive development of agricultural enterprises, and increase of agricultural produce.

5. Encouragement of road-building in the rural villages to facilitate the transportation of agricultural products.

Article 35.—The State shall open and develop oil, coal, gold and iron mines; and shall also encourage and protect private mining enterprises.

Article 36.—The State shall undertake and inaugurate State shipping enterprises; and shall also encourage and protect private shipping enterprises.

Article 37.—All persons shall be free to choose their profession. But when it is contrary to the public interest, the State may, by Law, restrict or deny such freedom.

Article 38.—All persons shall be free to make contracts: such freedom, in so far as it is not in conflict with the public interest or with good morals, shall be protected by Law.

Article 39.—In order to better their economic well-being as well as to promote closer co-operation between Capital and Labour, the people may form occupational organizations in accordance with Law.

Article 40.—Both Capital and Labor shall develop productive enterprises in accordance with the principle of co-operation and mutual benefit.

Article 41.—In order to improve the living conditions of Labour, the State shall put into effect various Laws for the protection of Labour and shall afford special protection to child and woman workers in respect of their age and health.

Article 42.—In order to safeguard as well as relieve peasants and workers who shall be unable to work on account of accidents, sickness, disability or old age, the State shall put into effect a Labor Insurance System.

Article 43.—In order to promote the economic interests of the people, the State shall encourage and promote various co-operative enterprises.

Article 44.—The State may control or regulate the production or sale as well as the market price of daily necessaries of the people.

Article 45.—Laws shall be enacted for the prohibition of usury, and exorbitant rents for the use of immovable properties.

Article 46.—The State shall give appropriate relief to those members of the national forces who are disabled in the course of active service.

CHAPTER 5.—EDUCATION OF THE CITIZENS.

Article 47.—The Three Principles of the People shall be the basic principles of Education in the Republic of China.

Article 48.—Both sexes shall have equal opportunity for education.

Article 49.—All public and private educational institutions in the country shall be subject to the supervision of the State, and shall also be responsible for the carrying out of the educational policies adopted by the State.

Article 50.—All Children of school age shall receive free education. Details shall be separately provided by Law.

Article 51.—Those who have not had free education (in their youth) shall receive special adult education. Details shall be separately provided by Law.

Article 52.—The Central and Local Governments shall provide adequate funds for necessary educational expenses, and shall also safeguard the security of funds which are, by Law, specially set apart (for educational purposes).

Article 53.—The State shall give encouragement or grants to private educational institutions which have achieved particularly satisfactory results.

Article 54.—Encouragement and grants shall be given for the education of overseas Chinese.

Article 55.—The State shall encourage and safeguard members of the administrative or teaching staffs of schools who hold satisfactory records and have been long in service.

Article 56.—All public and private educational institutions in the country shall establish scholarships and prizes for the encouragement of deserving but needy students.

Article 57.—The State shall encourage and protect research and discoveries in science or the arts.

Article 58.—The State shall protect and preserve historic remains and ancient relics which have historical, cultural or artistic value.

CHAPTER 6.—DIVISION OF POWER BETWEEN THE CENTRAL AND LOCAL GOVERNMENTS.

Article 59.—The principle of equilibrium shall be adopted in the division of power between the Central and Local Governments, as stipulated in Article 17 of the "Outline of National Reconstruction."

Article 60.—The various Local Governments may, within their respective sphere of authority, enact and ordain local laws and regulations. Where such laws and regulations are in conflict with those promulgated by the Central Government, they shall be null and void.

Article 61.—The demarcation of Central and Local Revenues shall be separately determined by Law.

Article 62.—The Central Government may restrict, by Law, any local tax when

1. It is contrary to public interest,
2. It encroaches upon the source of Central revenue,
3. It constitutes overlapping taxation,
4. It is detrimental to communications,
5. It is unjustifiably imposed upon goods imported from other localities for the sole benefit of the locality concerned,
6. It is in the nature of a transit duty on commodities in circulation among various localities.

Article 63.—The power of granting patents and monopolies is vested in the Central Government.

Article 64.—When one of the provinces reaches the period of Constitutionalism, the division of power between the Central and the Local Governments shall be defined in detail by Law in accordance with the "Outline of National Reconstruction."

CHAPTER 7.—ORGANIZATION OF THE GOVERNMENTS,

SECTION 1.—THE CENTRAL GOVERNMENT

Article 65.—The National Government shall exercise all the governing powers of the Republic of China.

Article 66.—The Government shall have supreme command over the land, naval and air forces.

Article 67.—The National Government shall have the power to declare war, to negotiate peace and to conclude treaties.

Article 68.—The National Government shall exercise the power of granting amnesties, pardons, reprieves, and restitution of civic rights.

Article 69.—The National Government shall exercise the power of conferring medals and decorations of honor.

Article 70.—The National Government shall compile and publish a budget and financial statement of the national revenues and expenditures for each fiscal year.

Article 71.—The National Government shall be composed of the following five Yuan: the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan; as well as various Ministries and Commissions.

Article 72.—The National Government shall have a President and an appropriate number of State Councillors, who shall be selected and appointed by the Central Executive Committee of the Kuomintang. The number of State Councillors shall be separately determined by Law.

Article 73.—The President of the National Government shall represent the National Government both internally and internationally.

Article 74.—The President of the five Yuan and the Heads of the various Ministries and Commissions shall be appointed or dismissed in accordance with Law by the National Government at the instance of the President of the National Government.

Article 75.—All Laws shall be promulgated and Mandates issued upon the signature of the President of the National Government according to Law.

Article 76.—The various Yuan, Ministries, or Commissions may, according to Law, issue orders.

Article 77.—The organization of the National Government and of the various Yuan, Ministries and Commissions shall be separately determined by Law.

SECTION 2.—THE LOCAL GOVERNMENTS.

Article 78.—In each province, a Provincial Government shall be established, which shall attend to the administration of provincial affairs under the direction of the National Government. Its organization shall be separately determined by Law.

Article 79.—When, as stipulated in Article 16 of the "Outline of National Reconstruction," a province reaches the period of Constitutionalism, the (Provincial) Assembly of People's Delegates may elect a Provincial Governor *(Cheng-Chang)*.

Article 80.—The system of local Government in Mongolia and Tibet shall be determined separately by Law in the light of the local conditions.

Article 81.—In each District *(Hsien)*, a District Government shall be established, which shall attend to the administration of district affairs under the direction of the Provincial Government. Its organization shall be separately determined by Law.

Article 82.—In each of the districts, a District Autonomy Preparatory Committee shall be organized to carry out the preparations as provided for in Article 8 of the "Outline of National Reconstruction." Its organization shall be separately determined by Law.

Article 83.—Municipalities may be established in localities, where industry and commerce, population or other special conditions warrant. The organization of such Municipalities shall be separately determined by Law.

CHAPTER 8.—ANNEX.

Article 84.—All laws which are in conflict with this Yueh Fa (Provisional Constitution) shall be null and void.

Article 85.—The power of interpreting this Yueh Fa shall be exercised by the Central Executive Committee of the Kuomintang of China.

Article 86.—A draft of the (Permanent) Constitution (Hsien-Fa) shall be prepared by the Legislative Yuan on the basis of the "Outline of National Reconstruction" as well as the achievements during the Political Tutelage and Constitutional Periods. The said draft shall be duly made known to the people at large in preparation for its adoption and enforcement at the opportune moment.

Article 87.—When a majority of the provinces in the country reach the period of Constitutionalism—that is, when District Autonomy has been completely instituted throughout each of such provinces—then the National Government shall immediately summon a National People's Congress (Kuo-Min-Ta-Hui) to decide upon the adoption and promulgation of the Hsien Fa (Permanent Constitution).

Article 88.—The present Yueh Fa (Provisional Constitution) shall be enacted by the National People's Convention (Kuo-Min-Hui-I), and forwarded to the National Government for promulgation.

Article 89.—The present Yueh Fa shall come into force from the date of promulgation.

APPENDIX B.

THE WORKING OF EXTRATERRITORIAL JURISDICTION IN CHINA.

(1) Great Britain.

(a) Extraterritorial jurisdiction is based on the Foreign Jurisdiction Acts, 1890-1913 and the China Order in Council 1925. Jurisdiction is exercised through a Supreme Court and provincial courts and extends to all civil and criminal cases.

(b) The Supreme Court formed by two judges and a provisional staff sits normally in Shanghai but it may sit anywhere in China.

(c) It has full jurisdiction in both civil and criminal matters, and may sit alone, with assessors or with a jury.

(d) Provincial courts presided over by the respective consular officers exist for each consular district.

(e) For the trial of minor offences there is a special British police court at Shanghai.

(f) Appeals from decisions of Supreme Court and provincial courts in certain civil cases and any criminal cases are heard by the Full Court usually comprising three judges. From this court further appeal may be made to the Judicial Committee of the Privy Council.

(g) Mitigation and remission of sentences are made by the Secretary or the British Minister on a report from the Supreme Court.

(2) The United States.

(a) Exercise of extraterritorial jurisdiction is regulated by:

(i) Act of 1906 which consolidated previous acts and created the United States Court for China;

(ii) Act of 1920 which merged the consular jurisdiction of the consular judge for the district of Shanghai with the functions of the commissioner of the United States Court for China.

(b) There are eighteen American Consular Courts in existence, viz., at Amoy, Antung, Canton, Changsha, Chefoo, Chungking, Foochow, Hankow, Harbin, Kalgan, Mukden, Nanking, Shanghai, Swatow, Tientsin, Tsinan, Tsingtao and Yunnanfu. All of these are presided over by the senior consular officer with the exception of Shanghai where the Commissioner of the United States Court for China sits.

(c) Consul Courts exercise jurisdiction in civil and criminal cases.

(i) In civil cases their jurisdiction is confined to cases where the amount involved does not exceed G. $500.

(ii) In criminal cases their jurisdiction extends only to cases where the maximum punishment does not exceed a fine of G.$100 or sixty days' imprisonment or both.

(d) The United States Court for China with a professional staff takes jurisdiction in important cases.

(i) It occupies a position similar to an American district court, and comprises a judge appointed for ten years, a district attorney, a marshal, a clerk and a commissioner.

(ii) It possesses an appellate jurisdiction in all cases tried in consular courts or in the commissioner's court at Shanghai.

(iii) From the United States Court for China appeals can be made to the United States Circuit Court of Appeals, Ninth Circuit at San Francisco, whence again appeals and writs of error can be taken into the Supreme Court of the United States.

(iv) Prisoners are imprisoned either in the American gaol at Shanghai or sent to Manila. They may be transferred to American Federal prisons by order of Attorney-General of the United States.

(e) American Laws enforceable against Americans in China are to be found in Section 4086 of the Revised Statutes and Sections 4 of the Act of June 30, 1906:

(i) "Section 4086.—Jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties respectively justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States furnish appropriate and sufficient remedies, the Ministers of the United States in those countries, respectively, shall by decrees and regulations which shall have the force of law, supply such defects and deficiencies."

(ii) "Sec. 4.—The jurisdiction of said United States Court both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American Consular Courts in China, and all judgments and decisions of said consular court, and all decisions, judgments and decrees of said United States Court shall be enforced in accordance with said treaties and laws. But in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States

shall govern the same subject to the terms of any treaties between United States and China."

(3) Japan.

(a) Exercise of consular jurisdiction is governed by:

(i) the "Law relating to the Duties of the Consular Official" or 1899;

(ii) the "Detailed Rules Relating to the Duties of the Consular Official."

(b) Japanese consular official has jurisdiction over:

(i) all civil cases regardless of amount involved;

(ii) bankruptcy cases;

(iii) non-contentious matters;

(iv) criminal cases except where offenses are felony.

(c) In cases of felony, the consular official conducts the preliminary examination, the place of trial varying:

(i) where persons are remitted from a consular official in central China the appropriate Court is the District Court of Nagasaki;

(ii) from Manchuria the appropriate Court is the District Court of Kwangtung;

(iii) from Chientao, the appropriate Court is the District Court of Seishin, Korea;

(iv) from Southern China, the appropriate Court is the District Court of Taihoku, Formosa;

(v) Cases involving offenses against the Imperial Household and the Imperial Family or offenses against the internal security of the state fall within the special jurisdiction of the Supreme Court of Japan proper or of the Colonial Government.

(d) Relating to appeal and final appeal from judgment of consular official, same judicial procedure is followed as in appeal and final appeal from judgment of general court of Japan. The system of appellate jurisdiction may be shown as follows:

FIRST INSTANCE	APPEAL	FINAL APPEAL
Consular Official in Central China. (As regards Criminal cases involving felony, District Court of Nagasaki)	Court of Appeal of Nagasaki	Supreme Court of Japan.
Consular Official in Manchuria. (As regards Criminal cases involving felony, District Court of Kwangtung).	Division of Appeal of High Court of Kwangtung.	Division of Final Appeal of High Court of Kwangtung.
Consular Official in Chientao. (As regards Criminal cases involving felony, District Court of Seishin, Korea).	Court of Appeal of Seoul.	Supreme Court of Korea.
Consular Official in Southern China, (As regards Criminal cases involving felony, District Court of Taihoku).	Division of Appeal of High Court of Formosa.	Division of Final Appeal of Formosa.

(e) There are thirty-five Japanese consulates in China.

(i) The consular official in charge is in each case a judge except that to each of the consulates-general at Fengtien, Tientsin, Shanghai and Tsingtao a consul or vice-consul is attached for judicial purposes.

(ii) The chancellor or the police official of the consulate acts as procurator while the chancellor acts as registrar.

(f) Judicial procedure.

(i) Judicial procedure in Japanese consular courts is similar to that in courts of Japan.

(ii) But where a criminal case affects friendly relations with a foreign state, the Minister for Foreign Affairs may order aacused to be removed to a Japanese prison and have the case examined and tried by either the District Court or the Court of Appeal of Nagasaki, the District Court of Kwantung, the District Court of Seishin or the District Court of Taihoku.

(g) Laws, ordinances, and regulations.

(i) Those enforced in Japan applicable to cases tried by consular official.

(ii) Where they are not applicable, due to the nature of the case, modifications may be laid down by Imperial Ordinance or order of the Minister of Foreign Affairs.

(iii) Consular officials may issue administrative and police orders and consular order may also provide for the punishment of a fine of not more than fifty yen or detention.

(h) Execution of sentence.

(i) In civil and commercial cases sentences are executed by a police official in the consulate.

(ii) In criminal cases sentences are executed in the prison attached to the consulate, but when the term of imprisonment or penal servitude is comparatively long, prisoners are sent to a prison situated in Japan.

(4) France.

(a) Exercise of extraterritorial jurisdiction is regulated by a law of July 8, 1852. Other laws concerning the subject are the Admiralty Ordinance of 1681; the edict of June, 1778; the law of May 28, 1838; the law of April 28, 1869, and the law of July 15, 1910.

(b) Organization of consular courts.

(i) There are 17 French consular courts, competent in both civil and criminal cases, and each made up of the consul as President and two assessors, except in simple police matters where the consul sits alone.

(ii) By decree of January 31, 1881 judicial functions in Peking are performed by the "Chancelier" of the Legation. A Judge for China was attached to sit in consular courts in the absence of consuls.

(iii) In civil and commercial cases assessors are appointed for each case and in criminal matters they are appointed for a year.

(iv) If the services of two assessors cannot be obtained the consul sits alone.

(v) The *chancelier* acts as registrar and clerk of the court, (in Peking the deputy *chancelier*).

(vi) There is no public prosecutor attached to the consular courts and the duties of the examining magistrate are carried out by the consul.

(c) Competence.

(i) Consular courts have full jurisdiction over civil and commercial cases where a French citizen or *protégé* is defendant.

(ii) There is no appeal in civil cases concerning personal matters or movables where the amount involved does not exceed 3,000 francs.

(iii) In criminal matters the court takes cognizance of misdemeanours.

(iv) If there is no prison or if the prison is not suitable to receive the convict, the consular court can change imprisonment penalties to fines.

(v) Serious criminal cases are referred to courts of appeal at Saigon or Hanoi for trial.

(d) Council chamber.

(i) Consular court sits as council chamber when the consul does not avail himself of his right of direct summons in police cases and misdemeanours.

(ii) It decides:

1—That proof is insufficient and that there is no case for prosecution.

2—That offense is a police offense requiring a police trial.

3—That offense is a misdemeanour requiring trial in court for petty offences.

4—That offense is a criminal one and issues an order for the remand of the accused in custody.

(e) Appeals.

(i) No appeal in simple police cases.

(ii) In civil cases notices of appeal are regulated by provisions of the edict of 1778 and Articles 456 and 61 of the Code of Civil Procedure.

(iii) In penal matters appeal can be had from all judgments of the consular courts respecting misdemeanour cases.

(iv) Appeal can be brought before court of Cassation in Paris.

(f) Law administered.

(i) In general laws of France are administered so long as they do not conflict with provisions of consular jurisdiction.

(ii) If plaintiff is a foreigner whose national law conflicts with French law the consular courts conform to rules of international law.

(5) Belgium.

(a) Extraterritorial rights based on Consular Organization Law of December 31, 1851.

(b) There is no permanent consular court but when necessary a court can be formed on the initiative of consuls at Canton, Hankow, Shanghai and Tientsin.

(c) Consular court consists of the Consul as President, two assessors, and a registrar.

(i) In civil cases the consul sits alone where the sum involved is not more than 100 francs.

(ii) The consul sits with two assessors in all other cases.

(e) Appeals can be made to the Court of Appeal at Brussels and further appeal on points of law to the Final Court of Appeal at Brussels.

(f) Police cases are tried by consul, there being no appeal from his judgment.

(g) Misdemeanours are tried by consul and two assessors, there being an appeal to Court of Appeal at Brussels, and further appeal on points of law to the Final Court.

(6) Denmark.

(a) Exercise of extraterritorial rights is regulated by the Act of Parliament of February, 1895. Pursuant to instructions under this Act by the Danish Ministry of Foreign Affairs, the exercise of consular jurisdiction is vested in the Danish Consular Court in Shanghai.

(b) The consular court is composed of the consul-general in Shanghai assisted by his staff and the subordinate local consuls.

(c) In civil cases the consul-general is sole judge. In criminal cases he directs the preliminary inquiry. In more serious cases he must be assisted by assessors.

(d) Competence.

(i) The court is competent to hear all civil cases where Danish subjects are defendants. It is also competent as probate court.

(ii) In criminal cases the court can inflict sentences to a maximum imprisonment of six months. More serious cases are referred to Copenhagen for trial.

(e) Law applied is Danish law mixed with local customs and necessities.

(f) Statistics show that only twenty-five criminal cases were tried by the court within a period of ten years (1916-1926), and civil cases average five per year.

(7) Italy.

(a) Extraterritorial jurisdicton is based on the Italian Consular law in operation before the conclusion of the Treaty of Peking.

(b) Judicial power is vested in the consul or in the consular court attached to each consulate. There are consuls-general at Shanghai and Canton and consuls at Harbin, Hankow and Tientsin.

(c) The court is composed of the consul or his deputy and two assessors. The vice-consul acts as registrar.

(d) The consul has discretion over appeals, although there is an appeal against his refusal to the Ministry of Foreign Affairs.

(e) In non-contentious matters consuls have the same jurisdiction as a president of a court of first instance in Italy and the consular court has the same jurisdiction as the court of first instance.

(f) Civil jurisdiction.

(i) The consul sits as single judge in all dispute arising between members of the crew of Italian ships and the captain.

(ii) The consul sits as single judge in civil or commercial disputes between Italians or disputes in which Italian subjects are defendants if the amount involved does not exceed five hundred lires; otherwise the consular court is competent.

(iii) No appeal is allowed against judgments of the consul sitting as single judge or by the consular courts in cases involving not more than one thousand five hundred lires; otherwise court of Appeal of Ancona is competent.

(g) Criminal jurisdiction.

(i) In criminal cases the consul alone has jurisdiction in "contravenzioni"; the consular courts take cognizance of "delitte", and cases involving more serious crimes *(crimi)* are sent to the Assizes Court of Ancona for trial.

(ii) Italian criminal law and municipal by-laws are applied.

(iii) There is no appeal from the decision of a consul sitting alone, and in cases tried by the consular court appeal can be made to the Court of Appeal of Ancona.

(iv) Consuls exercise police authority and may promulgate police regulations.

(8) The Netherlands.

(a) Exercise of jurisdiction is regulated by the Consular Law of July 25, 1871, of which there have been many amendments, the last being made in 1918.

(b) Judicial functions are exercised by consuls of highest rank at Amoy, Canton, Shanghai and Tientsin, or by a Court comprising the consular officer as president and two assessors appointed by the head of the Netherlands legation.

(c) Law of the Netherlands is applicable to the consular courts though it is modified by general usages of trade in commercial cases.

(d) With approval of the Minister for Foreign Affairs consular officers may make police and more important regulations.

(e) In civil cases where the amount involved is under 75 florins, the consular officer sits alone, and there is no appeal from these decisions.

(f) In criminal cases where the offense involves a fine below 60 florins or six days' detention or both, the consul sits alone.

(g) All other civil cases are tried by the Consular Court and from its decisions there is an appeal to the Court of Justice of Batavia where the amount in dispute is not below 600 florins.

(h) In criminal cases the consular court tries all offenses where the punishment is detention for more than six days or a fine of more than 60 florins. There is no appeal in such cases.

(i) Crimes involving not more than four years' imprisonment are tried by the consular court but appeal can be made at the Court or Justice of Batavia. More serious cases are tried by the court at Batavia directly from which there is a possible further appeal to the High Court of Justice of Netherland-Indies.

(9) Norway.

(a) Consular jurisdiction is governed by the Law of March 29, 1906 and exercised either by the consul alone or by the consul with the assistance of two assessors.

(b) The consul-general at Shanghai is the consular judge.

(c) In criminal cases.

(i) Where only fines may be inflicted the consular judge sits alone but has to call in two jurors. He mav also sit without assessors in cases where the punishment is under imprisonment for 3 months provided that the accused agrees to assessors not being called. Two assessors must sit with the judge in other cases.

(ii) The consular court has no jurisdiction in cases where the punishment is over three years. Where the penalty exceeds three years the case must be referred to courts in Norway.

(d) In civil cases.

(i) With the exception that the Judge may hear a case alone when the amount involved is under 200 kroner, all civil cases are heard by the consular court.

(ii) Appeal can be made at the Supreme Court of Norway where the claim exceeds the above amount. In cases where a smaller amount is involved an appeal lies to the City Court of Oslo.

(e) Norwegian law is applied and the consular judge sits regularly in Shanghai. He may, however, sit in other treaty ports if necessary.

(10) Portugal.

(a) Consular jurisdiction is governed by Portuguese law modified by diplomatic convention and exercised by consuls and consular courts.

(b) In Civil cases.

(i) Where the case involves less than 200 escudos the consul sits alone, and in these cases there is no appeal.

(ii) In cases where the amount in dispute exceeds 200 escudos the consul sits with two assessors. Appeal can be made to the High Judicial Court at Goa.

(c) In criminal cases.

(i) Where the punishment is a caution, suspension of political rights for not more than five years, a fine of not more than 1,000 escudos, banishment for not exceeding six months or imprisonment for not more than six months, the consul sits alone.

(ii) The consular court hears all other criminal cases except where the imprisonment is from two to eight years, followed by exile from eight to twenty-five years, or expulsion from Portugal or sentence to be served in Portugal West African Colonies. These are referred to the Judicial Court at Macao for trial, from which there is an appeal to the High Judicial Court at Goa and further appeal on question of law to the Supreme Court at Lisbon.

(11) Spain.

(a) Consular jurisdiction is regulated by regulations of November 18, 1854.

(b) The consul sits with two assessors and Spanish law is applied.

(c) In disputes where the amount involved is below $100, the procedure is by arbitration; and above this amount the consular court takes jurisdiction.

(d) On application of the injured party the consular court takes jurisdiction over offenses committed by Spanish subjects where no arms have been used or blood spilt. When arms have been used and blood spilt the consul inaugurates prosecution.

(e) The consul has the powers of a judge of a Spanish Court of First Instance in matters of a non-contentious nature provided the amount involved is under $400. Otherwise and in more important crimes appeal can be made to Madrid.

(12) Sweden.

(a) Consular jurisdiction is based on the Law of June 5, 1909.

(b) Swedish law is applied as far as local conditions permit and as far as it does not conflict with Swedish legislation.

(c) The court is composed of the Swedish consul-general as president and two assessors.

(d) In civil cases where the amount involved does not exceed 300 kroner and in criminal cases where the punishment is not severer than an imposition of a fine or damages of 300 kroner, the consul-general may sit alone.

(e) The consular judge exercises the highest police and executive authorities and the court may sit at any treaty port.

(f) From decisions of the consular judge and the consular court, appeals can be made to the Court of Appeals at Stockholm whence further appeal can be made to the High Court of Justice.

(13) Mixed Courts in China.

(a) Mixed Court of the International Settlement at Shanghai.

(i) In 1863 the consular body at Shanghai suggested that the Municipal Council be granted jurisdiction over foreigners over whom no local consul claimed jurisdiction.

(ii) In 1864 a mixed court was formed in the British Consulate. There was no clear definition of the scope of jurisdiction.

(iii) In 1869 the Mixed Court was formally established and continued to function in the International Settlement up to 1911. In 1902 an agreement was made between the Consular Body and the French Consul as follows:

"1. In all civil Cases between Chinese, the plaintiff will follow the defendant, and will sue him before the Mixed Court of his (the defendant's) residence.

"2. In all criminal cases of Chinese against Chinese, where foreigners are not concerned, and in all political cases against Chinese residents in the Settlement, the Mixed Court of the Settlement in which the crime or contravention has been committed is also competent.

"3. In Mixed Civil cases:

"a. If the plaintiff is a foreign (not of French nationality) and the Chinese defendant is a resident of the International Settlement, he is to be sued before the Mixed Court of the International Settlement.

"b. If the plaintiff is French, and the Chinese defendant is a resident of the French Settlement, he is to be sued before the Mixed Court of the French Settlement.

"c. If the plaintiff is a foreign (not of French nationality) and the Chinese is a resident of the French Settlement, the latter shall be sued before the Mixed Court of the International Settlement, whose warrant or summons for his appearance, after counter-signature by the French Consul-General, will be executed and served by the runners of the International Mixed Court, with the assistance of the police of the French Settlement, without previous hearing in the Mixed Court of the French Settlement.

"d. If the plaintiff is French and the Chinese defendant is a resident of the International Settlement, the latter shall be sued before the Mixed Court of the French Mixed Court, with the assistance of the police of the International Settlement, without a previous hearing in the Mixed Court of the International Settlement.

"4. In criminal cases where a foreigner (not of French nationality) is complainant, the Mixed Court of the International Settlement is competent; if a Frenchman is complainant, the Mixed Court of the French Settlement is competent.

"The provisions under Clauses 3c and 3d as to executing warrants also apply under this clause."

(iv) Taking advantage of the Revolution, the consular body in 1911 proclaimed that the consuls of the Treaty Powers had by virtue of their position and authority and as a measure of expediency confirmed three Chinese magistrates "to act under the guidance of and in concert with the assessors of the said consuls."

(v) In 1912 the consular body established a rule that foreign assessors shall sit and watch the case and shall not interfere."

(vi) The Chinese magistrates thereafter were appointed by the consular body. Gradually the assessors assumed a dominant position and the Mixed Court became more completely under foreign control.

(vii) From 1911 to 1926, there was no appeal with 1924 it decided that it would not be bound by precedents.

(viii) From 1911 to 1926, there was no appeal with regard to the judgments of the Mixed Court. As the Court functioned without any mandate from the Chinese Government after 1911, the Chinese Supreme Court in 1925 ruled that it was not a judicial tribunal.

(ix) In 1926 an agreement was reached between the consular body at Shanghai and the Kiangsu Provincial government, which created the Provisional Court. The document reads as follows:

"1. a. The Kiangsu Provincial Government in place of the Mixed Court in the International Settlement at Shanghai will establish the Shanghai Provisional Court. With the exception of cases which in accordance with the treaties involve the right of consular jurisdiction, all civil and criminal cases in the Settlement shall be dealt with by the said Provisional Court.

"b. All laws, including laws of procedure, and ordinances applicable at the present time in other Chinese Courts as well as those that may be duly enacted and promulgated in the future shall be applicable in the Provisional Court, due account being taken to the terms of the present agreement and to such established rules of procedure of the Mixed Court as shall be hereafter agreed upon.

"c. In criminal cases which directly affect the peace and order of the International Settlement, including contraventions of the Land Regulations and Bye-laws of the International Settlement, and in all criminal cases in which the accused is in the employ of a foreigner

having extraterritorial rights, the Senior Consul may appoint a Deputy to sit with the Judge to watch the proceedings. The concurrence of the Deputy shall not be necessary for the validity of the judgment, though he shall have the right to record his objections; he shall not, however, put any question to the witnesses or prisoners without the consent of the judge.

"d. All summonses, warrants and orders of the Court shall be valid after they have been signed by a Judge. All such summonses, warrants and orders shall be numbered for record by the Chief Clerk before service. When the summons, warrant or order is to be executed on premises occupied by a foreigner having extraterritorial rights, the Consul or other appropriate official of the Power concerned shall on presentation affix his counter signature without delay.

"e. In cases in which a foreigner having extraterritorial rights or the Shanghai Municipal Council is the Plaintiff in a civil action and in criminal cases in which a foreigner having extraterritorial rights is the complainant, the Consul of the nationality concerned or the Senior Consul may send an Official to sit jointly with the Judge in accordance with the provisions of the treaties.

"f. A Court of Appeal shall be established in connexion with the Provisional Court to deal with criminal cases which directly affect the peace and order of the Settlement and with mixed criminal cases. The President of the Provisional Court shall act concurrently as President of the Court of Appeal. No appeal shall be allowed in cases in which the penalty is below the maximum imprisonment of the fifth degree nor in cases under the Land Regulations and Bye-laws of the International Settlement.

"In all cases in which a Senior Consul's Deputy sat in the original hearing a different Deputy shall sit in the appeal, appointed in the same way and having the same rights as the original Deputy. In the same way a different Consular Official shall sit in the appeal in mixed criminal cases.

"g. The President and Judges of the Provisional Court as well as the Judges of the Court of Appeal shall be appointed by the Kiangsu Provincial Government.

"2. In cases involving imprisonment for ten years or more and in cases involving the death penalty, the Provisional Court shall report the same to the Kiangsu Provincial Government for approval. In cases in which the Provincial Government refuses its approval, the Provincial Government shall give its reasons and order the Provisional Court to rehear the case and again submit the judgment to the Provincial Government. All criminal cases in which the infliction of the death penalty has been approved shall be remitted to the Chinese Authorities outside the Settlement for the execution of such penalty. Inquests and autopsis (Chien Yen) in the Settlement shall be held jointly by the Judges of the Provisional Court and the Deputies appointed by the Senior Consul.

"3. The prisons attached to the Provisional Court, with the exception of the House of Detention for civil cases and the Women's Prison which are to be separately provided for, shall be under the charge of the Municipal Police specially detailed for the purpose, but they shall be operated as far as practicable in conformity with the Chinese Prison Regulations and subject to the supervision of the Court. The President of the Provisional Court shall appoint a Visiting Committee, which shall include a Deputy of the Senior Consul, to make investigations from time to time, and if it is considered that there are any respects in which the control over the prisoners is unsatisfactory, the same shall be reported to the Court, whereupon the Municipal Police shall be charged by the Court to make the necessary rectification which the said Police shall carry out without delay.

"4. All summonses, warrants and orders issued by the Court shall be executed by the Judicial Police who shall be detailed for this duty by the Municipal and be directly responsible to the Court in the execution of their duties as judicial police. The Municipal Police shall render full and prompt assistance in such matters as may be requested of, or entrusted to them by the Court, and when the

Municipal Police arrest any person, he shall, within twenty-four hours exclusive of holidays, be sent to the Court to be dealt with, failing which he shall be released.

"5. In all mixed civil cases where there has been a Consular Official sitting jointly with the Judge, the appeal shall be made to the Office of the Commissioner for Foreign Affairs, acting with the Consul concerned according to the treaties, but such cases may be turned over to the Provisional Court for retrial by a different judge, the original Consular Official being also changed. In the event of a disagreement between the Commission for Foreign Affairs and the Consul in respect of the appeal in a case which has been retried, the judgment given at the retrial shall stand.

"6. The financial affairs and such administrative work of the Court as shall be determined by a joint commission shall be entrusted to a Chief Clerk who shall be recommended by the Senior Consul and appointed by the Provincial Government on the receipt of a petition from the Court. He shall be subject to the supervision and orders of the President of the Court and shall have charge of the staff and exercise proper supervision over the Court finances. If the Chief Clerk is found to be incompetent or remiss in his duty the President of the Court may reprimand him, and if necessary remove him from office with the consent of the Senior Consul.

"7. The foregoing six articles, forming the Provisional Agreement for the rendition of the Mixed Court to the Kiangsu Provincial Government shall be in force for three years, dating from the day on which the Mixed Court is handed over. Within this period the Chinese Central Government may at any time negotiate with the Foreign Ministers concerned in Peking for a final settlement, which if agreed upon between the Chinese Central Government and the said Foreign Ministers, shall replace the present Provisional Agreement. If at the end of three years no final settlement has been reached in Peking, the present Provisional Agreement shall continue to be in force for another three years. At the end of the first three years, however, the Kiangsu Provincial Government may propose

any modifications of the present Agreement provided that notice is given six months before the expiration of the first period of three years.

"8. The present Provisional Agreement shall in no way bind the Chinese Central Government in any future discussion between it and the foreign Governments with regard to the abolition of extraterritoriality.

"9. The date on which rendition of the Mixed Court shall take place under the above Provisional Agreement shall be fixed by an exchange of notes to take place between the representative of the Kiangsu Provincial Government and the Senior Consul.

(x) Subsequently the jurisdiction of the court included:

1. Mixed criminal cases on foreign vessels within the harbour.
2. Mixed criminal cases arising on foreign property, including municipal roads, in the vicinity of the Settlement.
3. Mixed civil cases arising in the same localities. In criminal proceedings where a citizen of a non-treaty Power is accused, and a citizen of a treaty Power is complainant, a consular official of a third Power is competent to watch the proceedings.

(xi) As the Court is provisional in character and incompatible with the Chinese judicial system, the Chinese Government is eager to effect a final settlement of the question and has asked the several countries concerned to open negotiations. The notes exchanged with regard to this matter are as follows:

1. Text of Notes to the Ministers of Great Britain, The United States, France, The Netherlands, Norway and Brazil on the question of the Provisional Court, dated May 8, 1929:

"With reference to the former Mixed Court established in the International Settlement at Shanghai, the former Ministry of Foreign Affairs at Peking had repeatedly protested to the Ministers of the interested Powers and demanded its rendition. In 1926, delegates were appointed by both sides to discuss that question, but failed to arrive at any proper and satisfactory agreement.

"Although since then a change has been made in the judicial machinery in the said Settlement, it is impossible to gainsay the fact that the position of the new Court is still anomalous and its system remains confusing, being different from that of the whole country. The inconveniences arising therefrom have caused much complaint and dissatisfaction on the part of the people. In view of the increasingly cordial relationship happily subsisting between China and the foreign Powers, it is necessary and opportune to exert every effort to bring about a change that is compatible with the needs of the present time.

"I have the honour, therefore, to propose to Your Excellency, with regard to the above-mentioned judicial organ, to open negotiations in all sincerity and promptly make proper and satisfactory arrangements in order to effect a final settlement, so that the integrity of China's judicial power may be maintained and international goodwill increased. I am also communicating to the Ministers of the other interested Powers on the same subject and shall be glad if Your Excellency will kindly favour me with a reply."

2. Reply from the Danish Minister dated June 7, 1929.

"I had the honour together with some of my Honourable Colleagues to receive Your Excellency's Note of May 8 containing the proposal to open negotiations in all sincerity to arrive at a proper and satisfactory arrangement concerning the question of the former Mixed Court at Shanghai.

"As Your Excellency is aware the said former Mixed Court was reconstituted by an arrangement signed in 1926 by representatives of the Provincial Government of Kiangsu and—after approval of the Heads of Legations accredited in China—by the Consular representatives at Shanghai of the Powers enjoying extraterritorial rights. In consequence of this arrangement a new judicial organ was established in Shanghai on January 1, 1927.

"The contents of Your Excellency's Note were discussed by all the Heads of the Legations concerned, who comprised, in view of the above, not only the six to whom the Note was addressed (i.e., the Diplomatic Representatives of America, Brazil, Great Britain, France, the Netherlands and Norway), but also the Diplomatic Representatives of Belgium, Denmark, Italy, Japan, Portugal, Spain and Sweden.

"As a result of this discussion I am desired to inform Your Excellency that it is their unanimous opinion that, in view of the obtaining conditions and in order to reach a satisfactory decision in the speediest way possible, the question of the reorganization of the present Court should be examined on behalf of the Heads of the Legations concerned by a commission chosen from among their local representatives together with representatives of the Chinese Government and that the conclusions thus arrived at should in due course be submitted to the several Ministers and to the National Government of China. I am, however, desired by my Colleagues to add in this connection that the Ministers concerned cannot disguise from themselves the fact that certain unsatisfactory features in the functioning of the Court under the said agreement of 1926 have been due to external political and administrative interference with its operation and that they regard it as essential that these external influences should be excluded in future.

"My Colleagues, whilst submitting to Your Excellency the above proposal for the examination of this question by a joint commission, express the sincere hope that by dealing with the matter in this practical way a final settlement will before long be affected, so that the peace and order of the International Settlement in Shanghai may be safeguarded and justice administered in accordance with existing rights and international goodwill increased."

3. On July 3, 1929, the Waichiaopu sent identic notes to the Ministers of Great Britain, the United States, France, the Netherlands, Norway and Brazil concerning the question of the Provisional Court at Shanghai. The notes are in reply to the Ministers' recent proposal that the question be examined by a commission chosen from among their local representatives together with Chinese representatives, and insist on a settlement directly with the Ministers themselves. The official English translations of the Notes follow:

"I have the honour to acknowledge receipt of Your Excellency's Note of June 7 concerning the question of effecting an arrangement for readjusting the judicial organ in the International Settlement at Shanghai.

"The said question is not of a local character and ought not to be left to local representatives to examine and discuss. This

had been well understood by the Ministers of the interested Powers prior to the negotiations at Peking in 1926. At that time, therefore, the Ministers of the Powers concerned negotiated directly with the Ministry of Foreign Affairs without any participation of local representatives. Now that it is desired to effect a final settlement of the question, it is fitting that the Central Government continue the negotiations in all sincerity with the Ministers of the interested Powers.

"I regret, therefore, to state that I cannot agree with the proposal contained in Your Excellency's Note, namely, that the questions 'should be examined on behalf of the Heads of the Legations concerned by a commission chosen from among their local representatives together with representatives of the Chinese Government and that the conclusions thus arrived at should in due course be submitted to the several Ministers and to the National Government of China', for I regard such a way as only tending to complicate the matter without helping its practical solution.

"I am communicating to Your Excellency as well as to the other Ministers of the Powers concerned a request to open negotiations immediately and directly with this Ministry, so that this matter may be speedily settled.

"Awaiting a favourable reply, I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration."

4. Reply from the Senior Minister dated August 2, 1929.

"I have the honour to acknowledge the receipt of Your Excellency's Note of July 3rd in which you state, with regard to the proposed preliminary negotiations in Shanghai about reforming the existing Provisional Court, that such negotiations appear to be unnecessary, and that, since it is at present the wish to come to a final settlement, it is evident that sincere negotiations should be resumed between the Central Government and the interested Heads of Legations so that a satisfactory arrangement may be arrived at.

"In reply to the above I am desired by my Colleagues, the interested Heads of Legations, to point out that the above mentioned proposal for preliminary examination on behalf of the Heads of Legations, concerned by a commission of their local representatives together with representatives of the Chinese

Government was made in a spirit of entire good will and friendship with a view to finding in the quickest way possible the most practical solution of a question which during the last few years has not ceased to cause difficulties. In this connection I need not remind Your Excellency of the fact that by its terms the present provisional Agreement between the Consular Body in Shanghai and the Kiangsu Provincial Government holds good until December 31st next, and thereafter for a further period of three years unless in the meantime revised by mutual consent of the parties to that Agreement or unless replaced by a new Agreement concluded between the interested Heads of Mission and the Central Government.

"In the meanwhile my Colleagues and I, while still of the opinion that the most satisfactory way of meeting the wishes of the Chinese Government as expressed in Your Excellency's Note of May 8th last, and of obtaining the most speedy results would be through an examination in the first instance by a joint local commission such as suggested in my Note of June 7th, with a view to the submission of recommendations to Your Excellency's Government and to the interested Heads of Legations, re-affirm their willingness to enter into negotiations with the Chinese Government in accordance with the provisions of Article 7 of the Agreement of 1926 and await the receipt from Your Excellency of such concrete proposals as might furnish a basis for the negotiations."

5. Two additional notes have been exchanged recently and it is hoped that formal negotiations may begin in the near future.

(b) The French Mixed Court at Shanghai.

(i) Before 1869 its jurisdiction was exercised as follows:

1. The French Consul and the Taotai decided together mixed commercial cases which included suits by Chinese against French subjects and suits by French subjects against Chinese.
2. Cases concerning the Concession, i.e., with reference to taxes, property rights, etc., were decided by the Consul alone.
3. All Chinese delicts (délits) committed in the concession are also tried by the Consul.
4. Grave crimes committed by Chinese involved a surrender of the accused to the local authority.

5. Chinese executive authority in the concession could only be exercised with the consent of the French Consul.

(ii) The modified rules of 1869 provided that the Taotai could send a deputy to the French Consulate to sit with a delegate of the Consul. The criminal and civil jurisdiction of the court resembled that of the International Mixed Court.

(iii) The present procedure of the court depends upon the Sino-French Agreement of 1914 and the Consular Ordinances of May 9, 1921 and April 2, 1924.

1. The law applied is a mixture of French and Chinese law.

2. The court has its own prison and a municipal police force to execute its order, effect arrests, etc., within the concession.

(iv) The Court has jurisdiction regarding the following matters:

1. Criminal cases where the complainant is a French citizen or *protégé*, and the defendant is a Chinese or a subject of a non-treaty Power, the offense having been committed *in any of the foreign concessions* (settlements).

2. Criminal cases where both complainant and defendant are Chinese or subjects of non-treaty Powers, the offense having been committed in the French Concession.

3. Criminal cases where complainant and defendant are Chinese subjects of non-treaty Powers, the offense having been committed outside the concession, but within the vicinity of them, and the defendant is a *bona* fide resident in the French Concession.

4. Criminal cases where complainant and defendant are Chinese or subjects of non-treaty Powers, the defendant being in the employ of a French subject or *protégé*.

5. Civil cases where the plaintiff is a French subject or *protégé*, and the defendant is Chinese or a subject of a non-treaty Power. (Residence of the defendant and place where the obligation arose are here immaterial).
6. Civil cases between Chinese and subjects of non-treaty Powers, when the property in dispute is situated within the French Concession, whether either party resides in the French Concession or not (unless the defendant resides in the International Settlement); or where the defendant resides in the French Concession; or where the plaintiff resides in the French Concession, and the defendant and his goods are situated outside the Concession. This depends upon a rule of Chinese law, that the defendant must appear before the plaintiff's tribunal; or, lastly, where the defendant is employed by a French subject or *protégé*.

(v) Appeal:
1. Prior to 1905 there was no appeal from any decision of the Court.
2. By the Ordinance of 1921 a Court of Revision was formed to grant a rehearing on certain matters.

(vi) In 1926 following the agreement for the rendition of the International Mixed Court, the French Consul-General made a declaration that the following cases should be tried by the Chinese Magistrate alone:
1. Civil cases between Chinese.
2. Civil cases between nationals of Powers not enjoying extraterritorial rights in China.
3. Civil cases between Chinese and nationals of Powers not enjoying extraterritorial rights.

(c) The International Mixed Court at Amoy was established by the Land Regulations and By-laws for the Foreign Settlement of Kulangsu of January 12, 1902, and its position remains as anomalous as was that of the International Mixed Court at Shanghai. As to the Mixed Court at Hankow formed in 1895, it may be reached that it ceased to function when the rendition of the British concessions at Hankow was effected.

(14) By way of summary the following controversies and provisions made by their adjudication may be enumerated:

(a) Chinese authorities exercise jurisdiction according to Chinese law over controversies where no foreigners are involved.

(b) Consular or other courts permitted by China to operate in Chinese territory have jurisdiction over cases between two or more nationals of the same foreign Power. The law applied is that of the Power concerned.

(c) Chinese authorities exercise no jurisdiction over cases between nationals of different foreign Powers, except when both or all parties are nationals of Powers not enjoying extraterritorial rights. In such cases Chinese jurisdiction is complete.

(d) Chinese courts exercise jurisdiction according to Chinese law over cases in which one of the parties is a national of a Power enjoying extraterritorial rights and the other party is a national of a Power not enjoying such rights provided the latter is the defendant.

(e) Chinese courts exercise jurisdiction according to Chinese law over cases in which the plaintiffs are nationals of any foreign Powers and the defendants are Chinese.

(f) Cases in which the plaintiffs are Chinese and the defendants nationals of Powers entitled to extraterritorial rights are adjudicated in the courts of the respective foreign Powers involved in accordance with the laws of such Powers.

Select References: China Order in Council, 1925. Extraterritorial Cases. Wellington Koo, *Status of Aliens in China.* Kotenev, *Shanghai: Its Municipality and the Chinese;* M. Soulié de Morant, *Extraterritorialité et Intérêts Etrangers en Chine;* Morse, *International Relations,* Vol. III; Willoughby, *Foreign Rights and Interests in China; Report of the Extraterritoriality Commission; Report on the Mixed Court at Shanghai,* 1881, Hudson, "The Rendition of the International Mixed Court at Shanghai," *American Journal of International Law,* Vol. 21, No. 3.

APPENDIX C.

MODERN COURTS IN CHINA.

PROVINCE	COURT	SEAT
KIANGSU:	Supreme Court	Nanking
	Kiangsu High Court	Soochow
	Kiangsu First Division High Court	Tsingkiangpu
	Nanking District Court	Nanking
	Soochow " "	Soochow
	Chinkiang " "	Chinkiang
	Shanghai " "	Shanghai
CHEKIANG:	Chekiang High Court	Hangchow
	Chekiang First Divisional High Court	Yungchia
	Chekiang Second Divisional High Court	Chinhua
	Hangchow District Court	Hangchow
	Hangchow Divisional District Court for Chiahsin	Chiahsin
	Hangchow Divisional District Court for Wuhsin	Wuhsin
	Hangchow Divisional District Court for Shaoshing	Shaoshing
	Ningpo District Court	Ningpo
	Ningpo Divisional District Court for Linhai	Linhai
	Chinhua District Court	Chinhua
	Chinhua Divisional District Court for Chuhsien	Chuhsien
	Kianghwa Divisional District Court for Chienteh	Chienteh
	Wenchow District Court	Wenchow
	Wenchow Divisional District Court for Lishui	Lishui
	Chuchi Hsien Court	Chuchi

PROVINCE	COURT	SEAT
CHEKIANG: *(cont.)*	Kiangshan Hsien Court	Kiangshan
	Lanshe " "	Lanshe
	Shenhsien " "	Shenhsein
	Jui-an " "	Jui-an
	Tungyang " "	Tungyang
	I-wu " "	I-wu
	Wenlin " "	Wenlin
ANHWEI:	Anhwei High Court	Anting
	Anhwei Divisional High Court	Fengyang
	Huaining District Court	Huaining
	Wuhu District Court	Wuhu
KIANGSI:	Kiangsi High Court	Nanchang
	Kiangsi Divisional High Court	Kanhsien
	Nanchang District Court	Nanchang
	Kiukiang " "	Kiukiang
	Ki-an " "	Ki-an
	Shangyao " "	Shangyao
HUNAN:	Hunan High Court	Changsha
	Hunan First Divisional High Court	Yuanlin
	Hunan Second Divisional High Court	Kweiyang
	Changsha District Court	Changsha
	Changteh " "	Changteh
	Shaoyang " "	Shaoyang
HUPEI:	Hupei High Court	Wuchang
	Hupei First Divisional High Court	Ichang
	Hupei Second Divisional High Court	Hsianyang
	Wuchang District Court	Wuchang
	Hsiakow " "	Hsiakow
	Ichang " "	Ichang
	Hsiangyang " "	Hsiangyang
	Hwangkan " "	Hwangkan
	Shasi " "	Shasi

PROVINCE	COURT	SEAT
HONAN:	Honan High Court	Kaifeng
	Honan First Divisional High Court	Sinyang
	Honan Second Divisional High Court	Changteh
	Kaifeng District Court	Kaifeng
	Chengchow " "	Chengchow
	Loyang " "	Loyang
	Sinyang " "	Sinyang
HOPEI:	Hopei High Court	Tientsin
	Hopei First Divisional High Court	Peiping
	Hopei Second Divisional High Court	Taming
	Peiping District Court	Peiping
	Peiping Divisional District Court for Shunyi	Shunyi
	Peiping Divisional District Court for Wuching	Wuching
	Peiping Divisional District Court for Johhsien	Johhsien
	Tientsin District Court	Tientsin
	Paoting " "	Paoting
	Taming " "	Taming
	Tientsin Divisional District Courts for Tangshan and Taku	(not yet established).
SHANTUNG:	Wenshan Hsien Court	Tsinan
	Shantung First Divisional High Court	Tsinan
	Tsinan District Court	Tsinan
	Fushan " "	Fushan
	Tsingtao " "	Tsingtao
	Taian " "	Taian

PROVINCE	COURT			SEAT
	Wenshan	Hsien	Court	Wenshan
(cont.)	Tseyang	,,	,,	Tseyang
	Kinghsian	,,	,,	Kinghsian
	Fehhsien	,,	,,	Fehhsien
	Yihsien	,,	,,	Yihsien
	Ninyanghsien	,,	,,	Ninyanghsien
	Yutaihsien	,,	,,	Yutaihsien
	Linyi	,,	,,	Linyihsien
	Szeshui	,,	,,	Szeshui
	Shuchang	,,	,,	Shuchang
	Tsuhsien	,,	,,	Tsuhsien
	Tenhsien	,,	,,	Tenhsien
	Pingyin	,,	,,	Pingyin
	Tangyi	,,	,,	Tangyi
	Ishui	,,	,,	Ishui
	Tehhsien	,,	,,	Tehhsien
	Fehchen	,,	,,	Fehchen
	Tanhsien	,,	,,	Tanhsien
	Kahsiang	,,	,,	Kahsiang
	Laiwu	,,	,,	Laiwu
	Sintai	,,	,,	Sintai
	Tung-ao	,,	,,	Tung-ao
	Enhsien	,,	,,	Enhsien
	Hotsa	,,	,,	Hotsa
	Tsaohsien	,,	,,	Tsaohsien
	Yunchen	,,	,,	Yunchen
	Linkow	,,	,,	Linkow
	Tsechwang	,,	,,	Tsechwang
	Tungping	,,	,,	Tungping
	Wuchen	,,	,,	Wuchen
	Yitu	,,	,,	Yitu
	Liaochen	,,	,,	Liaochen
	Chiho	,,	,,	Chiho
	Putai	,,	,,	Putai
	Lintsing	,,	,,	Lintsing
	Anchiu	,,	,,	Anchiu
	Tsingchen	,,	,,	Tsingchen
	Changhsien	,,	,,	Changhsien

PROVINCE	COURT			SEAT
SHANTUNG: *(cont.)*	Changching	Hsien	Court	Changching
	Chufu	,,	,,	Chufu
	Yenchen	,,	,,	Yenchen
	Tsoping	,,	,,	Tsoping
	Kaotang	,,	,,	Kaotang
	Kwanhsien	,,	,,	Kwanhsien
	Fanhsien	,,	,,	Fanhsien
	Changshan	,,	,,	Changshan
	Chenwu	,,	,,	Chenwu
	Yuchen	,,	,,	Yuchen
	Tseping	,,	,,	Tseping
	Wuti	,,	,,	Wuti
	Pohsien	,,	,,	Pohsien
	Pingyuan	,,	,,	Pingyuan
	Lin-i	,,	,,	Lin-i
	Kwangyao	,,	,,	Kwangyao
	Pinghsien	,,	,,	Pinghsien
	Hweiming	,,	,,	Hweiming
	Shaokwan	,,	,,	Shaokwan
	Hsiaching	,,	,,	Hsiaching
	Linhsien	,,	,,	Linhsien
	Lintse	,,	,,	Lintse
	Changchiu	,,	,,	Changchiu
	Yangku	,,	,,	Yangku
	Lichin	,,	,,	Lichin
	Poping	,,	,,	Poping
	Tingtao	,,	,,	Tingtao
	Haiyang	,,	,,	Haiyang
	Chimo	,,	,,	Chimo
	Changhwa	,,	,,	Changhwa
	Huantai	,,	,,	Huantai
	Shanho	,,	,,	Shanho
	Tsiyang	,,	,,	Tsiyang
	Tsingping	,,	,,	Tsingping
	Chiuhsien	,,	,,	Chiuhsien
	Jichao	,,	,,	Jichao
	Kwanchen	,,	,,	Kwanchen
	Sinhsien	,,	,,	Sinhsien

PROVINCE	COURT	SEAT
SHANTUNG: *(cont.)*	Weihsien Hsien Court	Weihsien
	Yungsin " "	Yangsinhsien
	Chitung " "	Chitung
	Kaomi " "	Kaomi
	Tehping " "	Tehping
	Chaochen " "	Chaochen
	Pingtu " "	Pingtu
SHANSI:	Shansi High Court	Taiyuan
	Shansi First Divisional High Court	Tatung
	Shansi Second Divisional High Court	Yunchen
	Taiyuan District Court	Taiyuan
SHENSI:	Shensi High Court	Changan
	Shensi First Divisional High Court	Nancheng
	Shensi Second Divisional High Court	Yulin
	Nancheng District Court	Nancheng
KWANGTUNG:	Kwangtung High Court	Canton
	Kwangtung District Court	Canton
	Nanshao " "	Chukiang
	Chaomei " "	Swatow
	Chaomei Divisional District Court for Pingyuan	Pingyuan
	Hweichow District Court	Hweichow
	Hweichow Divisional District Court for Poklo	Poklo
	Chaolo District Court	Chaolo
	Kaolai " "	Mowming
	Kiungyai " "	Kiungshan
	Chinglien " "	Hopu
	Sinhwei " "	Sinhwei

PROVINCE	COURT			SEAT
KWANGTUNG: *(cont.)*	Chungshan	Branch	Court	Chungshan
	Shunteh	,,	,,	Shunteh
	Tungkwang	,,	,,	Tungkwang
	Chaoyang	,,	,,	Chaoyang
	Taichi	,,	,,	Taichi
	Yangkiang	,,	,,	Yangkiang
	Chaoan	,,	,,	Chaoan
	Samshui	,,	,,	Samshui
	Tsingyuan	,,	,,	Tsingyuan
	Szehwei	,,	,,	Szehwei
	Loting	,,	,,	Loting
	Nanshuin	,,	,,	Nanshuin
	Lenhsien	,,	,,	Lenhsien
	Yinteh	,,	,,	Yinteh
	Tienpei	,,	,,	Tienpei
	Chiehyang	,,	,,	Chiehyang
	Chinghsien	,,	,,	Chinghsien
	Punin	,,	,,	Punin
	Yaoping	,,	,,	Yaoping
	Hweilai	,,	,,	Hweihai
	Tapu	,,	,,	Tapu
	Haikan	,,	,,	Haikan
	Haifeng	,,	,,	Haifeng
	Lungchwang	,,	,,	Lungchwang
	Hoyuan	,,	,,	Hoyuan
	Hawshan	,,	,,	Hawshan
	Kaiping	,,	,,	Kaiping
	Tehching	,,	,,	Tehching
	Wuhwa	,,	,,	Wuhwa
	Wenchang	,,	,,	Wenchang
	Lochang	,,	,,	Lochang
	Sinyi	,,	,,	Sinyi
	Hsinnin	,,	,,	Hsinnin
	Oongyuan	,,	,,	Oongyuan
	Lohwei	,,	,,	Lohwei
	Fangchen	,,	,,	Fangchen
	Linshui	,,	,,	Linshui
	Tsengchen	,,	,,	Tsengchen

PROVINCE	COURT			SEAT
KWANGTUNG: *cont.)*	Fengshun	Branch	Court	Fengshun
	Jenhwa	"	"	Jenhwa
	Hoping	"	"	Hoping
	Hwahsien	"	"	Hwahsien
	Kaoming	"	"	Kaoming
	Enping	"	"	Enping
	Linshan	"	"	Linshan
	Yunfu	"	"	Yunfu
	Hsinhsin	"	"	Hsinhsin
	Changhsien	"	"	Changhsien
	Yaihsien	"	"	Yaihsien
	Pao-an	"	"	Pao-an
	Wanlin	"	"	Wanlin
	Tsungfoo	"	"	Tsungfoo
	Changkiang	"	"	Changkiang
	Shihsin	"	"	Shihsin
	Tzeking	Hsien	Court	Tzeking
	Lenkiang	"	"	Lenkiang
	Lenping	"	"	Lenping
	Chiaolin	"	"	Chiaolin
	Suishee	"	"	Suishee
	Kaichien	"	"	Kaichien
	Pingyuan	"	"	Pingyuan
	Tingan	"	"	Tingan
	Hsuwen	"	"	Hsuwen
	Juyuan	"	"	Juyuan
	Yangchun	"	"	Yangchun
	Linkao	"	"	Linkao
	Lungmen	"	"	Lungmen
	Kan-en	"	"	Kan-en
	Kiungtung	"	"	Kiungtung
	Lunin	"	"	Lunin
	Yangshan	"	"	Yangshan
	Sinning	"	"	Sinning
	Wuchwang	"	"	Wuchwang
	Lenshan	"	"	Lenshan
	Fenchwang	"	"	Fenchwang
	Hwahsien	"	"	Hwahsien

PROVINCE	COURT	SEAT
KWANGTUNG: *(cont.)*	Yunan Hsien Court	Yunan
	Chenmai " "	Chenmai
	Kwangning " "	Kwangning
KWANGSI:	Kwangsi High Court	Nanning
	Kwangsi First Divisional High Court	Kweilin
	Nanning District Court	Nanning
	Kweilin " "	Kweilin
	Tsangwu " "	Tsangwu
	Lungchow " "	Lungchow
	Liuchow " "	Liuchow
	Yulin " "	Yulin
	Pinglo " "	Pinglo
	Peisei " "	Peisei
YUNNAN:	Yunnan High Court	Yunnanfu
	Yunnan First Divisional High Court	Tali
	Yunnan Second Divisional High Court	Chaotung
	Yunnanfu District Court	Yunnanfu
KWEICHOW:	Kweichow High Court	Kweiyang
	Kweichow District Court	Kweiyang
	Chenyuan " "	Chenyuan
	Lanti " "	Lanti
SZECHWAN:	Szechwan High Court	Chengtu
	Szechwan First Divisional High Court	Chungkiang
	Szechwan Second Divisional High Court	Yaan
	Szechwan Third Divisional High Court	Luhsien
	Szechwan Fourth Divisional High Court	Iachung

PROVINCE	COURT	SEAT
SZECHWAN: *(cont.)*	Chengtu District Court	Chengtu
	Chungkiang " "	Chungkiang
	Luhsien " "	Luhsien
	Tzekung " "	Tzeliuchin
FUKIEN:	Fukien High Court	Foochow
	Fukien Divisional High Court	Ssuming
	Foochow District Court	Foochow
	Foochow Divisional District Court for Nantai	Nantai
	Ssuming District Court	Ssuming
	Chien-eu " "	Chien-eu
	Lungki " "	Lungki
	Putien " "	Putien
	Putien Divisional District Court for Senyu	Senyu
	Chinkiang District Court	Chinkiang
	Foochow Divisional District Court for Changlo	Changlo
	Foochow Divisional District Court for Fooching	Fooching
	Foochow Divisional District Court for Lenkiang	Lenkiang
LIAONIN:	Liaonin High Court	Mukden
	Mukden District Court	Mukden
	Yingkow " "	Yingkow
	Liaoyang " "	Liacyang
	Antung " "	Antung
	Chinhsien	Chinhsien
	Liaoyuan " "	Liaoyuan
	Fuhsien " "	Fuhsien
	Tiehling " "	Tiehling
	Tiaonan " "	Tiaonan
	Hailung " "	Hailung

PROVINCE	COURT	SEAT
KIRIN:	Kirin High Court	Kirin
	Kirin First Divisional High Court	Ilan
	Kirin Divisional High Court	Yenki
	Kirin District Court	Kirin
	Changchun " "	Changchun
	Yenki " "	Yenki
	Pingkiang " "	Pingkiang
	Tunghwa " "	Tunghwa
	Divisional " "	Fushun
	" " "	Tungfen
	" " "	Changtu
	" " "	Kaiping
HEILUNGKIANG:	Heilungkiang High Court	Lungkiang
	Heilungkiang First Divisional High Court	Aigun
	Lungkiang District Court	Lungkiang
	Hulan " "	Hulan
KANSU:	Kansu High Court	Lanchow
	Kansu First Divisional High Court	Pingliang
	Kansu Second Divisional High Court	Tienshui
	Kansu Third Divisional High Court	Chuichuen
	Kansu Fourth Divisional High Court	Wuwei
	Kaolan District Court	Kaolan
SINKIANG:	Sinkiang High Court	Tihwa
SUIYUAN:	Suiyuan High Court	Suiyuan
CHARHAR:	Charhar High Court	Kalgan
	Wanchuan District Court	Kalgan

PROVINCE	COURT	SEAT
JEHOL:	Jehol High Court	Chengteh
NINGHSIA:	Ninghsia High Court	Ninghsia
TSINGHAI:	Tsinghai High Court	Sining
Special	Special District High Court	Pingkiang
District in	Special District Court	Pingkiang
MANCHURIA:	Special District First Divisional District Court	Hengtachotze
	Special District Second Divisional District Court	Hailar
	Special District Third Divisional District Court	Manchuli

APPENDIX D.

LIST OF MODERN PRISONS ESTABLISHED OR SOON TO BE ESTABLISHED IN CHINA.*

	NAME OF PRISON	CITY	CAPACITY
HOPEI:	First Prison	Peiping	1,000
	Second ,,	Peiping	1,000
	Third ,,	Tientsin	500
	First Divisional Prison	Peiping	300
	Second ,, ,,	Chochow	150
	Third ,, ,,	Paoting	300
	Wanchuan Branch Prison	Wanchuan	300
	Tientsin ,, ,,	Tientsin	700
	Paoting ,, ,,	Paoting	200
LIAONING:	First Prison	Mukden	1,000
	Second ,,	Liaoyang	500
	Third ,,	Tiehling	400
	Fourth ,,	Newchwan	400
	Fifth ,,	Changtu	300
	Sixth ,,	Chingsien	100
	Seventh ,,	Antung	200
	Eighth ,,	Hailung	100
	Ninth ,,	Taonan	100
	Tenth ,,	Liaoyuan	300
	Eleventh ,,	Sian	100
	Twelfth ,,	Fuhsien	300
	Thirteenth ,,	Hsinming	300
	Fourteenth ,,	Hingking	300
KIRIN:	First Prison	Kirin	500
	Second ,,	Changchun	500
	Third ,,	Harbin	500

* NOTE:—Because the construction of new prisons is a continuous process, now going on for some years, it is not possible to give an exact list of those already finished. This program is about three-fourths complete according to the latest statement of the Chinese Ministry of Justice.

	Name of Prison	City	Capacity
Heilungkiang:	First Prison	Lungkiang	300
Shantung:	First Prison	Tsinan	500
	Branch First Prison	Tsinan	100
	Second Prison	Chefoo	500
	Third „	Tsining	500
	Fourth „	Yitu	500
	Branch Fourth Prison	Tsingtao	100
	Fifth Prison	Tsinan	300
	Sixth „	Tsingtao	200
Honan:	First Prison	Kaifeng	300
	Branch „	Kaifeng	100
	Loyang „	Loyang	100
Shansi:	First Prison	Yaiyuan	1,000
	Second „	Yungchen	500
	Third „	Tatung	300
	Fourth „	Taiku	200
	Fifth „	Fengyang	300
Kiangsu:	First Prison	Nanking	700
	Second „	Shanghai	700
	Third „	Soochow	500
	Fourth „	Nantung	300
	Third Divisional Prison	Soochow	500
Anhwei:	First Prison	Anking	500
	Branch First Prison	Ankiang	100
	Second Prison	Wuhu	300
	Third „	Fowyang	500
	First Divisional Prison	Hweining	200
Kiangsi:	First Prison	Nanchang	300
	Second „	Kiukiang	500
	First Divisional Prison	Nanchang	200
Chekiang:	First Prison	Hangchow	500
	Second „	Ningpo	300
	Third „	Kashing	500
	Fourth „	Wenchow	—

	NAME OF PRISON	CITY	CAPACITY
FUKIEN:	First Prison	Foochow	300
	First Divisional Prison	Foochow	200
HUPEH:	First Prison	Wuchang	500
	First Divisional Prison	Wuchang	300
	Second " "	Ichang	200
SHENSI:	First Prison	Changan	500
	Second "	Nancheng	300
	Third "	Yulin	200
	Fourth "	Ankang	200
	Fifth "	Fenghsiang	200
	Sixth "	Kanhsien	200
KANSU:	First Divisional Prison	Lanchow	500
	Second Prison	Wuwei	500
	Third "	Tienshui	500
	Fourth "	Pingliang	300
YUNNAN:	First Prison	Quanming	1,000
KWEICHOW:	First Division	Kweiyang	500
	Second Prison	Chenyuan	300
KWANGSI:	First Prison	Kweilin	700
	Second "	Nanning	500
SZECHUAN:	First Prison	Chengtu	500
SUIYUAN:	First Prison	Suiyuan	300
CHARHAR:	First Prison	Wanchuanhsien	300
	Second "	Kalgan	300
Prison of Special Administrative District of Harbin		Harbin	300
HARBIN:	Divisional Prison	Manchuli	300
NINGHSIA:	First Prison	Ninghsia	300

PROVINCE	KIND OF PRISON	CITY
Kiangsu	Juvenile Prison	Nanking
	" "	Hsuchow
	Ordinary Prison	Tanyang
	" "	Taitsang
	" "	Sungkiang
	" "	Yangchow
	" "	Kwei-an
	" "	Haichow
	" "	Hsuchow
	Recidive Prison	Tsun-ming
Hopei	Juvenile Prison	Peiping
	" "	Chengting
	Ordinary Prison	Tsanghsien
	" "	Hochien
	" "	Lanhsien
	" "	Tsingyuan
	" "	Chengting
	" "	Taming
	" "	Hsintai
	Recidive Prison	Laiyuan
Shantung	Juvenile Prison	Tsinan
	" "	Weihsien
	Ordinary Prison	Hweiming
	" "	Lin-chi
	" "	Hocheh
	" "	Liaochen
	" "	Tehsien
	Recidive Prison	Linching
Honan	Juvenile Prison	Kaifeng
	" "	Loyang
	Ordinary Prison	Hsuchang
	" "	Sinyang
	" "	Nanyang
	" "	Loyang
	" "	Chihsien
	Recidive Prison	Hwanchwang

PROVINCE	KIND OF PRISON	CITY
Shansi	Juvenile Prison	Taiyuan
	" "	Tatung
	Ordinary Prison	Changyen
	" "	Linfeng
	" "	Ninwu
	" "	Hsinhsien
	" "	Chingchen
	Recidive Prison	Yuyoo
Shensi	Juvenile Prison	Changan
	" "	Nancheng
	Ordinary Prison	(already complete)
	Recidive Prison	Fushih
Kansu	Juvenile Prison	Kaolan
	Ordinary Prison	Tsiuchuen
	Recidive Prison	Twanghwang
Chekiang	Juvenile Prison	Hangchow
	" "	Ningpo
	Ordinary Prison	Woohsin
	" "	Kinghwa
	" "	Shaoshing
	" "	Linhai
	" "	Chuhsien
	" "	Chienteh
	" "	Leeshui
	Recidive Prison	Tinghai
Anhwei	Juvenile Prison	Anking
	" "	Pengpu
	Ordinary Prison	Hsunchen
	" "	Fengyang
	" "	Shehsien
	Recidive Prison	Hoshan

PROVINCE	KIND OF PRISON	CITY
Kiangsi	Juvenile Prison	Nanchang
	" "	Ki-an
	Ordinary Prison	Kanhsien
	" "	Ki-an
	" "	Shangyao
	" "	Linchwang
	" "	Panyang
	" "	Lintu
	" "	Kao-an
	Recidive Prison	Tayu
Hupeh	Juvenile Prison	Wuchang
	" "	Shasi
	Ordinary Prison	Hsaikow
	" "	I-chang
	" "	Shasi
	" "	Hwangkan
	" "	Hsiangyang
	" "	An-lu
	" "	Chung-hsiang
	" "	Yunhsien
	Recidive Prison	Anshih
Hunan	Juvenile Prison	Changsha
	" "	Changteh
	Ordinary Prison	Changsha
	" "	Changteh
	" "	Henyang
	" "	Yuanlin
	" "	Paoching
	" "	Yaoyang
	" "	Kweiyang
	" "	Chikiang
	" "	Linlin
	Recidive Prison	Leehsien

PROVINCE	KIND OF PRISON	CITY
Szechwan	Juvenile Prison	Chengtu
	" "	Chungking
	Ordinary Prison	Chungking
	" "	Luhsien
	" "	Ya-an
	" "	Lanchung
	" "	Wanhsien
	" "	Tsechung
	" "	I-ping
	" "	Nanchun
	" "	Sichang
	" "	Mowhsien
	" "	Pingwu
	Recidive Prison	Santai
Fukien	Juvenile Prison	Foochow
	" "	Lungyah
	Ordinary Prison	Lungshe
	" "	Siming
	" "	Nanping
	" "	Chingkiang
	" "	Yapu
	" "	Changting
	Recidive Prison	Tungshan
Kwangtung	Juvenile Prison	Canton
	" "	Tehching
	Ordinary Prison	Canton
	" "	Chuhkiang
	" "	Swatow
	" "	Mowming
	" "	Kiangshan
	" "	Kao-yao
	" "	Kweiyang
	" "	Meihsien
	" "	Chinghsien
	Recidive Prison	Nan-au

PROVINCE	KIND OF PRISON	CITY
Kwangsi	Juvenile Prison	Kweilin
	" "	Yun-nin
	Ordinary Prison	Tsangwu
	" "	Maping
	" "	Lungchow
	" "	Peiseh
	" "	Kweiping
	Recidive Prison	Chingsi
Yunnan	Juvenile Prison	Yunnanfu
	" "	Tali
	Ordinary Prison	Mengtse
	" "	Szemao
	" "	Tengyueh
	" "	Chaotung
	" "	Tali
	" "	Malung
	" "	Leekiang
	Recidive Prison	Lin-err
Kweichow	Juvenile Prison	Kweiyang
	" "	Chengyuan
	Ordinary Prison	Chengyuan
	" "	Lantai
	" "	Pi-cheh
	" "	Tsun-i
	" "	Szenan
	" "	Yunkiang
	Recidive Prison	Weilin
Liaoning	Juvenile Prison	Mukden
	" "	Chinghsien
	Ordinary Prison	Linkiang
	Recidive Prison	Antu

PROVINCE	KIND OF PRISON	CITY
Kirin	Juvenile Prison	Kirin
	Ordinary Prison	I-lan
	Recidive Prison	Lin-an
	Penal Service Prison (*See note*)	(localities now under investigation)
Heilungkiang	Juvenile Prison	Heilungkiang
	Ordinary Prison	Shuihwa
	" "	Heiho
	Recidive Prison	Hulun
	Penal Service Prison	(localities now under investigation)
Sinkiang	Juvenile Prison	Tihwa
	Ordinary Prison	Tihwa
	" "	Tahchen
	" "	I-nin
	" "	Akasu
	" "	Yenchi
	" "	Soolai
	" "	Chehwa
	" "	Hotien
	" "	A-shan
	Recidive Prison	(attached to the ordinary prison for the time being)
	Penal Service Prison	(localities now under investigation)

NOTE:—Such prisons are for those convicts who, having served in an ordinary prison in good conduct, are sent to the frontiers of such places as Kirin, Heilungkiang, etc., to engage in agricultural or mining work.

PROVINCE	KIND OF PRISON	CITY
Jehho	Juvenile Prison	Chenteh
	Ordinary Prison	Chenteh
	" "	Chifeng
	" "	Chaoyang
	Recidive Prison	(attached to the ordinary prison for the time being)
	Penal Service Prison	(localities now under investigation)
Charhar	Juvenile Prison	Kalgan
	Ordinary Prison	Tolung
	Recidive Prison	Shantu
	Penal Service Prison	(localities now under investigation)
Suiyuan	Juvenile Prison	Kweisui
	Ordinary Prison	Wuyuan
	Recidive Prison	(attached to the ordinary prison for the time being)
	Penal Service Prison	(localities now under investigation)
Ninghsia	Juvenile Prison	Ninghsia
	Ordinary Prison	Tingyuanyin
	" "	Weiyuanchen
	Recidive Prison	(attached to the ordinary prison for the time being)
	Penal Service Prison	(localities now under investigation)

PROVINCE	KIND OF PRISON	CITY
Tsinghai	Juvenile Prison	Sinin
	Ordinary Prison	Tulansi
	" "	Kaikuto
	Recidive Prison	(attached to the ordinary prison for the time being)
	Penal Service Prison	(localities now under investigation)
Sikan	Juvenile Prison	Kanting
	Ordinary Prison	Kanting
	" "	Pa-an
	" "	Changtu
	Recidive Prison	(attached to the ordinary prison for the time being)

APPENDIX E.

LEGAL REFORM IN CHINA

(1) A Brief Statement of Law Codification.

Ever since the end of the 19th century the Chinese Government has been endeavoring to revise its laws and the judicial system. Efforts were first directed towards changing certain provisions of the Ta Tsing Lu-li, the *corpus juris* of the Manchu Dynasty, with a view to adapting it to the new conditions and customs of the country as a temporary makeshift pending the preparation of new codes.

The first noteworthy attempt at legal reform was the creation of the Hsien Cheng Pien Ch'a Kwan in 1898, whose function was to propose a draft constitution, certain election laws and a plan for the organization of a national deliberative assembly. The Tzu Cheng Yuan was established in 1907, and it was the first legislative organ of the Manchu Government having certain degrees of popular participation.

Strong impetus to the movement of law codification was found in the promise made by Great Britain in the Mackay Treaty of September 5th., 1902, and by the United States and Japan in their respective treaties both of October 8th., 1903, to surrender their extraterritorial rights when the state of Chinese laws, the arrangements for their administration, and other considerations would warrant them in so doing.

In pursuance of the reform programme of the Government and partly to fulfill the pledge of law reform made to the foreign countries, the Hsiu Ting Fa Lu Kwan, a law codification bureau, was established in 1902, and Prince Tsai Chuen, Yuan Shih-kai, Shen Chia-pen, Vice-Minister of State and an eminent authority on Chinese jurisprudence, and Dr. Wu Ting-fang, the lawyer-diplomat, were appointed Imperial Commissioners. To assist the commissioners, Mr. Allen, a noted American lawyer, was engaged as adviser, and Japanese experts were associated with the Commission.

The function of the Bureau was first to revise the Ta Tsing Lu-li and then to compile draft codes of law. To discharge the duty thus entrusted to it, the Bureau undertook to continue the work of the Board of Punishment and in doing so it revised the

old Tsing Code under the name Hsien Hsing Hsing Lu, the Criminal Law in Force, after having abolished no less than two thousand provisions contained in the old code. This Law was promulgated in 1909. The Commission had also prepared a number of other important laws such as the Bankruptcy Law, the Mining Law, the Police Offenses Law, etc., etc.

After the establishment of the Republic the Government took great pains to investigate the local customs and usages throughout the country in order to revise the draft codes prepared under the former Government. In 1912 a new Law Codification Commission was formed with the immediate object of revising the criminal law. The Commission was then reorganized and Dr. Wang Chung-hui appointed its chairman in 1916. Subsequently the Commission's staff was enlarged and many jurists of international repute such as M. Georges Padoux, the distinguished French jurist who assisted Siam, Mr. Tung Kang, Chief Justice of the Supreme Court, Mr. Lo Wen-kan, some time Prosecutor-General of the Republic were associated in the work. In reading through the list of laws given below one can readily see that the Commission did a great deal of work, of which the Provisional Criminal Code warrants special mention.

The National Government spares no effort in the codification of law. At present there are two organs attached to the Ministry of Justice, which are devoted to judicial improvement. One is the Codification Commission, consisting of five members, engaged in the compilation and preparations of new law codes; the other is the Judicial Council which is to consider and propose measures for the improvement of judicial administration, the appointment of judicial officers and other cognate matters.

The proper work of legislation is taken up by the Legislative *Yuan*, which, as regards law-making, is divided into several drafting committees. The Drafting Committee of the Civil Code can be taken for illustration. The Committee was appointed soon after the inauguration of the Legislative *Yuan* in the autumnof of 1928. It consists of five members and a number of expert advisers. After fifty sessions, it submitted on April 15th., 1929, the Draft Bill of the General Principles of the Civil Code to the Legislative *Yuan*, which was finally adopted on April 20th. after its third reading. The Bill was approved by the State Council at the meeting held on May 10th., and was promulgated

by the National Government on May 23rd. The General Principles of the Civil Code have been in force since October 10th. Book two of the Civil Code on Obligations has passed its second reading.

As expressed in the Declarations attached to several of the treaties concluded last year, the Commercial Code will duly be promulgated before long. The Laws on Negotiable Instruments and Fishery have been adopted by the Legislative *Yuan* and submitted to the State Council for approval. At present the labour law and land law are almost ready for adoption. Besides, mention must be made of the Nationality Law, which was promulgated on February 5th., 1929.

Of all the laws promulgated and regulations adopted by the National Government thus far, the most important is the Organic Law which was promulgated on October 10th., 1928. This is a much needed and timely document, for it gives a fundamental law to the nation, which had been divided in authority and had no less than three constitutions at different times since 1912, none of which, save the Nanking Provisional Constitution for a brief period after its adoption, had any legal effect on the nation as a whole.

The National Government, as provided for in this Organic Law, is frankly a party government. The fact that the real power behind the Organic Law is the leadership of the Kuomintang appears very clearly in its Preamble, which invokes no more ultimate or wide-spread popular authority than the Party itself. This we may interpret as a measure of political expediency, for it has been generally admitted that it is necessary to disregard the full implications of democracy for the time being, since the people at large are not prepared to share the responsibilities of a popular government. However, promise is made, as already made in the Will of the late Dr. Sun Yat-sen, that the political power will soon be restored to the people.

Another essential characteristic of the Organic Law is that it has incorporated the "five powers doctrine" of Dr. Sun. This doctrine embodies the classical principle of the separation of power into Legislative, Executive and Judicial, to which are added two others: that of "examination" (civil service) and that of supervision, censorship and audit, somewhat suggestive of

the old imperial board of censors. The five *Yuans* together with the several departments under the Executive *Yuan* form some sort of a dual cabinet, because certain measures of the Government, according to the Organic Law, require not only action of the Executive Yuan but also the countersignature of the action of the Executive *Yuan* but also the countersignature of the Presidents of the other four *Yuans*. The purpose of this system is that proper checks and balances can be maintained against the growth of too great power in one hand and that leadership thus established in the Party can be held together as the governing force over the country.

The superior position assigned to the Executive *Yuan* is also striking. Chapter II of the Organic Law bears silent testimony to this fact. To students of government, especially those in the West, it may be a cause for surprise to see a constitution of our own age without a bill of rights and the executive power mentioned before the legislative power, somewhat contrary to the general practice of constitution drafting. This arrangement seems to be highly advisable at this stage of political development in China. The jurisdiction is that it is only sensible to establish a strong party rule until the political education of the mass will have reached such a level as would warrant it to assume ultimate control.

(2) A List of Codes, Laws, Ordinances and Regulations.

The following list contains the more important Chinese codes, laws, ordinances and regulations applicable at present. A few of the laws enumerated below or certain of their provisions might have been superseded by more recent instruments, but, generally speaking, the old laws passed at Peking are still in force. While the expeditionary forces spread northward from Canton, the Nationalist authorities provided themselves with a body of laws by ruling that pending the promulgation of laws of its own, all the old laws passed at Peking should continue in force, where not inconsistent with the aims of the Government. This ruling and practice was confirmed by an Order of the Government dated August 12th., 1927, which provided that "The Nationalist Government needs immediately all kinds of laws and ordinances, and pending the promulgation thereof, all the substantive laws, codes of procedure, and appurtenant rules and orders which have been promulgated or are

in effect, are continued in force temporarily; except where inconsistent with the aims and principles of the Kuomintang or where in conflict with the laws and orders of the Nationalist Government."

A. CONCERNING CIVIL CASES

Regulations relating to the Concession and Cultivation of Waste Lands belonging to the State, promulgated on March 3rd, 1914.

Regulations concerning Mining Enterprises, promulgated on March 11th, 1914.

Rules relating to Settlement of Mortgages upon Immovables, approved on October 6th, 1915.

Forestation Law, promulgated on April 30th, 1915.

Regulations concerning the Supervision of Monasteries and Temples, promulgated on October 29th, 1915.

Law of Copyright, promulgated November 7th, 1915.

Law relating to Registration of Copyright, promulgated February 1st, 1916.

The Civil Code, Book I. General Principles, passed by the Legislative *Yuan* on April 20th, 1929, and promulgated on May 23rd, 1929.

B. CONCERNING COMMERCIAL CASES

Ordinance concerning Commercial Associations, promulgated on January 13th, 1914.

Ordinance for the General Regulation of Traders, promulgated on March 2nd, 1914.

The Law relating to Chambers of Commerce, promulgated on September 11th, 1914.

Law governing Stock Exchanges, promulgated on December 29th, 1914.

Ordinance concerning Markets for Commodities, promulgated on March 15th, 1921.

Trade Mark Law, promulgated on May 3rd, 1923.

Detailed Regulations for the Execution of the Trade Mark Law, promulgated May 8th, 1923.

The Law on Standards and Measures, passed by the Legislative *Yuan* on February 2nd, 1929, and promulgated on February 16th, 1929.

Laws on Negotiable Instruments, passed by the Legislative *Yuan* on September 28th, 1929.

Law on Fishery passed the Legislative *Yuan* on October 26th, 1929.

C. CONCERNING CRIMINAL CASES

The Provisional Criminal Code, promulgated during the reign of Hsuan Tung, made enforceable temporarily by a Presidential Mandate of March 10th, 1912.

Regulations governing Military Criminal Cases, promulgated on March 18th, 1915, and revised by Ordinance of August 17th, 1912.

Ordinance relating to Offences against the Credit of Government Bonds, approved November 29th, 1914.

Ordinance relating to the Traffic in Poppy Seeds, approved on December 20th, 1914.

Law on Offences relating to Government Salt Monopoly, promulgated on December 22nd, 1914.

The Provisional Criminal Code Amendment Act, promulgated on December 24th, 1914.

Ordinance forbidding the Melting of the Brass Coins of the late Tsing Dynasty, approved on January 20th, 1916.

Regulations governing Naval Criminal Cases, promulgated on April 7th, 1916, and revised by Ordinance of May 24th, 1918.

The Revised Law on Offences relating to Morphine, made enforceable under the Presidential Mandate of December 21st, 1920.

Regulations for the Punishment of Corruptions among Officials, promulgated on March 29th, 1921.

Ordinance prohibiting the Keeping of Bondsmaids, promulgated on February 24th, 1922.

Rules for the Punishment of Traffic in Men to Foreign Countries, promulgated on May 4th, 1926.

Regulations relating to the Punishment of Acts committed by Party Members contrary to their Oaths, promulgated on September 22nd, 1926.

Rules for the Punishment of Local Ruffians and Corrupt Gentries, promulgated on August 18th, 1927.

Provisional Regulations relating to Punishment of Anti-revolutionary Offences, promulgated on March 7th, 1928.

Provisional Regulations for the Punishment of Robbery and Banditry, promulgated on November 18th, 1927, and prolonged for a period of 6 months by Order of May 28th, 1928.

Provisional Regulations for the Punishment of False Accusation relating to Special Criminal Cases, promulgated on July 23rd, 1928.

Provisional Regulations relating to the Procedure to be adopted by Provisional Tribunals for the Trial of Special Criminal Cases, promulgated on June 11th, 1928.

Revised Regulations governing the Organization of Provisional Tribunals for the Trial of Special Criminal Cases, revised on June 29th, 1928.

Prison Rules promulgated on October 9th, 1928, by Order of the Ministry of Justice.

D. CONCERNING PROCEDURE, CIVIL, COMMERCIAL, AND CRIMINAL

Regulations governing Commercial Arbitration Courts, promulgated on January 28th, 1913, by the Ministry of Justice and Ministry of Agriculture and Commerce.

Regulations relating to Civil Procedure, promulgated on July 22nd, 1921.

Rules governing Execution in Civil Cases, promulgated by Instructional Order of the Ministry of Justice dated August 3rd, 1920.

Provisional Regulations relating to Sentence by Order, promulgated on December 28th, 1920, by the Ministry of Justice.

Regulations governing Legal Costs, approved on June 20th, 1920.

Regulations governing the Registration of Immovables, promulgated on May 21st, 1921.

Provisional Regulations relating to Arbitration of Civil Cases, promulgated by Instructional Order of the Ministry of Justice, dated August 8th, 1921.

Regulations regarding the Detention of the Accused in Civil and Criminal Cases, promulgated on September 13th, 1921, by Presidential Mandate.

General Regulations governing Registration, promulgated on May 21st, 1922.

Regulations relating to Criminal Procedure, promulgated on November 14th, 1922.

Regulations relating to the Enforcement of the Regulations governing Criminal Procedure, promulgated on November 14th, 1921.

General Provisions relating to the Procedure in Opium Cases, promulgated on April 2nd, 1928.

Law of Criminal Procedure, promulgated on July 28th, 1928, effective since September 1st, 1928.

Regulations relating to Courts-Martial and Procedure in Military Cases, promulgated on March 25th, 1915, and revised on August 17th, 1921.

Regulations relating to Courts-Martial and Procedure in Naval Cases, promulgated on May 21st, 1918.

Regulations relating to Procedure in Civil and Criminal Cases involving Nationals of Non-extraterritorial States, promulgated on May 23rd, 1919.

The Law governing the Procedure of Making Laws and Regulations, passed by the Legislative *Yuan* on May 4th, 1929, and promulgated on May 14th, 1929.

E. CONCERNING NATIONALITY AND APPLICATION OF LAWS

Revised Law of Nationality, revised and promulgated on November 30th, 1914.

Detailed Rules for the Application of the Revised Law on Nationality, promulgated on February 12th, 1915.

Rules for the Application of Law, promulgated on August 5th, 1918.

Nationality Law, passed by the Legislative *Yuan* on January 29th, 1929, and promulgated on February 5th, 1929.

Rules governing the Application of the Nationality Law, passed by the Legislative *Yuan* on January 29th, 1929, and promulgated on February 5th, 1929.

Provisional Regulations relating to the Application of Law to Theft and Robbery Cases, promulgated on March 9th, 1928.

Regulations governing the Application of the Criminal Code, promulgated June 9th, 1928.

F. CONCERNING JUDICIAL ORGANIZATION AND ADMINISTRATION

The Law of the Organization of the Judiciary, sanctioned by Imperial Decree in the First Year of Hsuan-tung and made enforceable by Presidential Mandate, March 10th, 1912.

Provisional Regulations for Detention Houses, promulgated on January 28, 1913.

Rules for the Management and Administration of Prisons, promulgated on December 1st, 1913.

Law of Disciplinary Punishment of Judicial Officers, promulgated on October 15th, 1915.

Provisional Law relating to the Organization of Branch Division of District Courts in Districts (Hsien), promulgated on April 22nd, 1917.

Regulations governing the Organization of District (Hsien) Judicial Offices, promulgated on May 1st, 1917.

Regulations concerning the Ranks and Grades of Judicial Officers, promulgated on July 17th, 1918.

Regulations concerning Salaries of Judicial Officers, promulgated on July 17th, 1918.

Supreme Court Regulations, promulgated on May 29th, 1919.

Revised Provisional Regulations concerning Lawyers, promulgated August 13th, 1923.

Rules relating to Lawyers, promulgated on July 23rd, 1927, by Order of the Ministry of Justice.

Rules relating to the Registration of Lawyers, promulgated on July 23rd, 1927, by Order of the Ministry of Justice.

Regulations governing the Organization of the Law Codification Commission, promulgated on November 26th, 1927.

Provisional Regulations regarding Disciplinary Punishment of Judicial Officers, promulgated on May 12th, 1928.

Provisional Regulations relating to Retrial, promulgated on September 19th, 1928, by Order of the Ministry of Justice.

Regulations governing the Organization of the Committee on Judicial Administration in the Ministry of Justice, promulgated on March 19th, 1928.

Provisional Regulations governing the Examination and Appointment of Judicial Officers, promulgated on August 6th, 1928.

Rules governing the Organization of the Ministry of Justice (of the Judicial *Yuan)*, passed by the Legislative *Yuan* on April 6th, 1929, and promulgated on April 17th, 1929.

G. CONCERNING POLICE

Regulations relating to the Use of Police Weapons, promulgated on March 3rd, 1914.

Law relating to Warnings for Maintaining Peace and Order, promulgated on March 3rd, 1914.

Police Law relating to Preservation of Public Order, promulgated on August 29th, 1914.

Game Law, promulgated on September 1st, 1914.

Law of Publications, promulgated on December 14th, 1914.

Law relating to Police Offences, promulgated on November 7th, 1915.

H. CONCERNING PETITION AND ADMINISTRATIVE SUITS

Regulations concerning the Organization of the Court of Administrative Justice, promulgated on March 31st, 1914.

Law relating to Administrative Suits, promulgated on July 20th, 1914.

Law of Petition, promulgated on July 20th, 1914.

I. CONCERNING MARTIAL LAW AND PRIZES

Martial Law, promulgated on December 15th, 1912.

Regulations concerning Prize Court, promulgated on October 20th, 1917.

Regulations relating to Maritime Prizes, promulgated on October 30th, 1917.

J. CONCERNING CASES TO WHICH ALIENS ARE PARTIES

Law relating to Procedure in the Trial of Cases to which Aliens are Parties, promulgated on March 6th, 1913.

Regulations concerning Judgments in Civil and Criminal Cases involving Nationals of Countries having no Extraterritorial Privileges in China, promulgated on May 23rd, 1919.

Regulations relating to Jurisdiction over Aliens of Non-treaty Countries, promulgated July 22nd, 1919.

Provisional Regulations concerning Lawyers of Countries having no Extraterritorial Privileges in China, promulgated on December 24th, 1920. (Amended on February 15th, 1922).

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APPENDIX F.

SYNOPSIS OF NEW CHINESE CODE OF CRIMINAL PROCEDURE

Detention

Article 74.—The accused in custody, his statutory representative, curator, or relative may at any time apply for bail.

Article 75.—The officer who grants the bail shall fix a suitable sum of money as surety to be paid, by the applicant, but a third party may be allowed to pay the sum.

A bail may, according to the circumstances of the case, be given in valuable securities or in bond in lieu of money, but a bond may be entered into only by a person of means or a shop of solvency, residing within the jurisdiction of the court and shall state that the sum named therein is payable when so ordered.

The officer who admits the accused to bail may restrict where the accused shall reside.

Article 76.—The officer who grants the bail shall, when the money is paid or security given, or bond entered into, release the accused from detention.

Article 77.—After release, the amount of bail, if found to be insufficient, may be increased.

Article 78.—Application for bail cannot be refused when the offence of the accused is punishable only with detention or fine.

The sume of money in bail for an offence punishable only with fine cannot exceed the maximum amount of fine.

Advocates

Art. 165.—The accused may, after the institution of prosecution, employ an advocate at any time.

The statutory representative curator, husband or wife of the accused may independently employ an advocate for the defence.

Article 166.—The advocate employed must be a lawyer, provided that, with the consent of the court, a person who is not a lawyer, may also be employed.

Article 170.—If no advocate has been employed after the institution of prosecution in a case, the first trial of which is within the jurisdiction of the Summary court or the District

court, the presiding judge if he considers that the case is such that an advocate should be employed, may motu proprio designate one from the public advocate for the defence and in a case where the punishment involved is imprisonment for more than five years, the presiding judge, in the circumstances described above, shall motu proprio designate one public advocate for the defence.

Article 171.—If no advocate has been employed in a case, the first trial of which is within the jurisdiction of the High Court, the presiding judge shall motu proprio designate one public advocate for the defence.

Trial

Article 269.—The presiding judge shall make a list of all the witnesses whether requested by the parties or considered by the court to be necessary for examination and shall summon each of them separately.

If any witness requested by the parties is considered irrelevant to the case, the court may by ruling refuse the request.

Article 280.—The confession of the accused, if not produced thru threats, violence, inducement, fraud or any other unlawful means but agreeing with the facts, may be used as evidence.

Although the accused has confessed, the Court shall still investigate the necessary evidence so as to ascertain the truth of the confession.

Article 281.—After examination of the accused, the presiding judge shall investigate the evidence.

Article 282.—All facts shall be ascertained from the evidence.

Article 283.—The weight of evidence shall be left to the free judgment of the court.

Article 284.—The Court shall show to the accused for acknowledgment the things used as evidence and shall ask him whether he has any explanation.

Article 294.—The presiding judge may, motu proprio or at the request of the parties, summon any witness outside the list (mentioned in Article 269.)

Article 298.—The presiding judge shall, every time after he has investigated some evidence, ask the accused whether he has anything to say.

The court shall inform the accused that he may produce evidence in his own favor.

Article 316.—The court shall pronounce a judgment of "not guilty" when the offence is not proved or the act of the accused constitutes no offence.

Code of Civil Procedure

Article 337.—The court may, in accordance with the provision of Section IV of this chapter, investigate the evidence.

Article 339.—The court shall, from the points brought up in the arguments and from the results following the investigation of evidence, exercise its free discretion in determining the truth or falsehood of the alleged facts, except where the law has special provisions in regard thereto.

The reason for such discretion shall be stated in the judgment.

Article 340.—A party (whether plaintiff or defendant) shall prove the facts alleged in his own favour, except those (facts) which are self-evident to the court or of which the court has taken judicial notice.

Criminal Code

Punishments.

Article 53.—The death penalty shall be executed by strangulation within the precincts of a prison.

No death penalty may be executed without confirmation by the Ministry of Justice.

Article 54.—Persons sentenced to imprisonment or to detention shall be confined in a prison.

Persons sentenced to imprisonment or to detention shall be required to perform labour, provided that in accordance with the nature and circumstances of the case they may be exempted from the performance of labour.

Gambling and Lotteries.

Article 278 (i) Whoever gambles for money or other article of value shall be punished with a fine of not more than one thousand *yuan;* provided that the staking of articles for the purpose of providing temporary amusement by means of gambling shall not constitute an offence under this Article;

(ii) Any article intended for gambling purposes which is then and there found to have been used in gambling, together with any money or other article of value in the bank or on the gaming table shall be forfeited whether or not they belong to the offender.

Article 281 (i) Whoever issues lottery tickets without authority from the Government shall be punished with imprisonment for not more than one year or detention, in addition to which a fine of not more than three thousand *yuan* may be imposed;

(ii) Whoever acts as medium or agent for the sale of such lottery tickets shall be punished with imprisonment for not more than six months or detention, in addition to or in lieu of which a fine of not more than one thousand *yuan* may be imposed.

Homicide

Article 282 (i) Whoever takes the life of another shall be punished with dealt or with imprisonment for life or for not less than ten years;

(ii) An attempt to commit an offence under this Article shall be punishable.

Article 283 (i) Whoever takes the life of any of his lineal ascendants shall be punished with death;

(ii) Whoever takes the life of any of his collateral ascendants shall be punished with death or imprisonment for life;

(iii) An attempt to commit any offence under this Article shall be punishable;

(iv) Whoever makes preparation to commit an offence under this Article shall be punished with imprisonment for not more than three years.

Article 284 (i) Whoever takes the life of another in any of the following circumstances—

1. As a result of a premeditated plan;
2. By dismembering, disembowelling or any other cruel or ferocious act;

shall be punished by death;

(ii) An attempt to commit any offence under this Article shall be punishable.

Article 285 (i) Whoever takes the life of another in any of the following circumstances—

1. For the purpose of facilitating the commission of another offence;
2. In order to escape punishment for another offence, or to secure the benefit derived from the commission of another offence;

shall be punished with death or imprisonment for life;

(ii) An attempt to commit an offence under this Article shall be punishable.

Article 286 (i) Whoever under justifiable provocation there and then takes the life of another, shall be punished with imprisonment for not less than one year and not more than seven years;

(ii) An attempt to commit an offence under this Article shall be punishable.

Article 291 (i) Whoever through negligence causes the death of another shall be punished with imprisonment for not more than two years or detention, or a fine of not more than one thousand *yuan;*

(ii) Whoever in the performance of his occupation commits the offence specified in the preceding section by neglecting the degree of care required by his occupation, shall be punished with imprisonment for not more than three years or detention, or a fine of not more than one thousand *yuan.*

Theft.

Article 337 (i) Whoever takes away the property of another with intent unlawfully to aappropriate the same for himself or for a third party, is said to commit theft, and shall be punished with imprisonment for not more than five years or detention, or a fine of not more than five hundred *yuan;*

(ii) An attempt to commit an offince under this Article shall be punishable.

Article 338 (i) Whoever—

1. With intent to steal, by night breaks into any dwelling house or any structure which is used as a dwelling-house, or having concealed himself within such building, commits theft;

2. Breaks or scales any window, door, or wall and commits theft;
3. Carries arms and commits theft;
4. Forms a gang of three or more persons and commits theft;
5. Commits theft furing a time of flood, fire, or other calamity;
5. Commits theft during a time of flood, fire, or other
7. Makes the commission of theft a profession;

shall be punished with imprisonment for not less than one year and not more than seven years;

(ii) An attempt to commit an offence under this Article shall be punishable.

Snatching—Robbery

Article 343 (i) Whoever snatches away anything belonging to another with intent unlawfully to appropriate the same for himself or for a third party, shall be punished with imprisonment for not less than six months and not more than five years;

(ii) Where death or grievous bodily harm results from the commission of such offence, the offender shall be punished in accordance with the provisions relating to the offence of intentionally causing injury resulting in death or in grievous bodily harm;

(iii) An attempt to commit an offence under section (i) of this Article shall be punishable.

Article 344 (i) Whoever commits an offence under section (i) of the last preceding Article in any of the circumstances specified in Article 338, shall be punished with imprisonment for not less than three years and not more than ten years;

(ii) An attempt to commit an offence under this Article shall be punishable.

Misappropriation

Article 356 (i) Whoever, having custody of anything belonging to another, unlawfully appropriates the same for himself or for a third party, shall be punished with imprisonment for not more than five years or detention, in addition to or in lieu of which a fine of not more than one thousand *yuan* may be imposed;

(ii) An attempt to commit an offence under this Article shall be punishable.

Article 357 (i) Whoever—in respect of anything of which he has custody by reason of his official functions or of his occupation—commits the offence specified in section (i) of the last preceding Article, shall be punished with imprisonment for not less than six months and not more than five years, in addition to which a fine of not more than three thousand *yuan* may be imposed;

(ii) An attempt to commit an offence under this Article shall be punishable.

Fraud

Article 363 (i) Whoever by fraudulent means causes another to deliver anything belonging to such other person or to a third party with intent unlawfully to appropriate the same for himself or for another, shall be punished with imprisonment for not more than five years or detention, in addition to or in lieu of which a fine of not more than one thousand *yuan* may be imposed;

(ii) Whoever by such means obtains for himself or causes a third party to acquire an undue interest in any property, shall be liable to the same punishment;

(iii) An attempt to commit an offence under this Article shall be punishable.

Article 364 (i) Whoever makes the commission of the offence specified in the last preceding Article a profession shall be punished with imprisonment for not less than one year and not more than five thousand *yuan* may be imposed;

(ii) An attempt to commit an offence under this Article shall be punishable.

APPENDIX G.

THE DOCTRINE OF REBUS SIC STANTIBUS AND THE TERMINATION OF TREATIES

(From the American Journal of International Law, July 1927, Vol. 21, Number 3)

The decision of the Chinese Government to terminate its so-called "unequal" treaties with foreign Powers is defended, in the main, on a right resulting from the rule of *rebus sic stantibus*, which it is often said is "tacitly annexed to every convenant." Referring specifically to the notification by the Government of China to Belgium on October 27, 1926, of the intention of the former government to terminate its treaty of November 2, 1865, with Belgium, a Chinese scholar says: "China abrogates the treaty on the recognized principle of *rebus sic stantibus*, that is, the tacit condition recognized by international law as attending to all treaties that they shall cease to be obligatory so far as the state of facts upon which they were founded has substantially changed."[1]

The important changes, economic and political, which have taken place in the life of many states in recent years, and which are the result of a rapidly developing civilization, have been invoked in an increasing number of instances in defense of claims for the revision or termination of treaties which were entered into when such changes were unforeseen. The principle of *rebus sic stantibus* was invoked by Austria-Hungary in 1908 as a justification, in part, for the annexation of Bosnia and Herzegovina, over which the Treaty of Berlin of 1878 and the Convention of Constantinople had given her the right of occupation and administration.[2] It was on this principle that Switzerland demanded a revision of her treaty of 1909 with Germany and Italy relative to the Saint Gothard Railroad, a revision to which Germany gave her consent.[3] The non-observance by the Ottoman Government of the Treaty of London of 1913 with the

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[1] Yang Kwang-Sheng, "China Abrogating Unfair Treaties with the Powers," Current History, Feb. 1927, p. 968.

[2] Blociszewski, *L'Annexion de la Bosine et de l'Herzegovine*, 17 *Rev. Gen. de Dr. Int. Pub.* (1910), p. 441.

[3] Scelle, 20 *ibid.* (1913), pp. 484 *ff.*

Allied Balkan Powers was defended on the same principle, namely, that when the treaty was signed the Balkan States were allies with one another, whereas at the time Turkey refused to observe the treaty, they were at war with one another.[4] In May, 1918, the Government of Persia informed the Government of the Netherlands that it regarded as terminated all treaties which had been imposed upon it in recent years, and especially the Anglo-Russian Treaaty of 1907 concerning the establishment of spheres of influence in Persia. In 1919 the Government of France invoked the doctrine of *rebus sic stantibus* as a justification for the denunciation of the treaties of 1815 relative to the neutralized zone of Savoy, it being declared that the stipulations of the said treaties no longer "corresponded to the actual circumstances."[5] By Article 31 of the Treaty of Versailles Germany consented to the abrogation of the treaty of 1839 for the neutralization of Belgium for the reason that the régime of neutralization established by the latter treaty no longer "corresponded to the existing circumstances." In November, 1919, the Government of China, relying upon the principle of *rebus sic stantibus*, abrogated unilaterally the conventions of November 5, 1913, and June 7, 1915, with Russia and Mongolia.[6] In January, 1924, the Government of Norway denounced the treaty of November 2, 1907, with Great Britain, France and Germany relative to the guarantee of the territorial integrity of Norway, on the ground that the events of recent years had brought about a change in the international situation which was altogether unlike that which existed at the time the treaty was concluded. By an exchange of notes the other parties consented to the termination of the treaty.[7] Finally, in April, 1924, the Soviet Government of Russia announced that while it did not consider the existing treaties between Russia and other Powers as necessarily abrogated, nevertheless, in view of the changes in the international situation which had taken place since they were concluded, it proposed to examine into their validity from the point of view of the principle of *rebus sic stantibus*.[8]

[4] Fauchille, *Traité de Droit International Public*, t.I, troisieme partie (1926), p. 386.

[5] See Art. 435 of the Treaty of Versailles.

[6] *Rev. de Dr. Int. et de Lég. Comparée*, 2nd ser., t. II, p. 106.

[7] *Ibid*, and ser., t. VI, p. 299.

[8] Fauchille, *op. cit.*, p. 388.

Other instances in which this principle has recently been invoked as a justification for the termination of revision of treaties might be cited. Considering that the world has been and is now passing through an era of remarkable change, it is not improbable that there will be further demands in the near future for the revision or termination of treaties which were entered into years ago and whose stipulations no longer correspond to the existing conditions and which in some cases have ceased to operate equally as between the parties. The authors of the Covenant of the League of Nations appear to have had this fact in mind when they formulated Article 19, which empowers the Assembly to advise from time to time "the reconsideration by the members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."[9] Manifesty, however, this clause does not give the Assembly itself jurisdiction to revise treaties, and this was the conclusion reached in the case of the appeal of Bolivia in 1921 for a revision of her treaty of 1904 with Chile, which it was said had been imposed on Bolivia by force, and which on account of the failure of Chile to carry out its provisions had left Bolivia without access to the sea.

There is a difference of opinion among text writers as to whether the principle of *rebus sic stantibus* is a recognized rule of international law,[10] but the great majority of them admit that as a principle at least of international morals and public policy it is well established. All admit that, while the general principle is that *pacta sunt servanda* and that no party can by its own act liberate itself from the obligations which it has assumed in voluntarily entering into a treaty engagement, nevertheless they admit that there are exceptional cases when either

[9] Since unanimity is required to advise the reconsideration of treaties, and since fifty-six states are now represented in the Assembly, that body is not well fitted for the exercise of such a function. Manifestly the Council, or still more, the Permanent Court of International Justice, might more appropriately have been entrusted with it.

[10] Lammasch (*Das Völkerrecht Nach dem Kriege*, 1917, pp. 142 *ff.*) denied that it was a rule of international law, and so did Bruno Schmidt in his monograph *Uber die Völkerrechtliche Clausula rebus sic rtantibus* (1907).

Kaufmann, however. adopts the contrary view. *Das Wesen des Völkerrechts und die Clausula rebus sic stantibus* (1911). And so does Pfaff, *Die Klausel rebus sic stantibus in der Doktrin und der Österreichischen Gesetzgebung* (1898).

party has a moral, if not a legal, right to demand that the treaty be revised, replaced by another, or even terminated, a right which may so clearly be justified upon considerations of equity and justice that if the obligation were the result of a private contract the courts would not hesitate to grant relief to the complaining party. What the conditions are which justify a demand by one party for modification or termination of the treaty are not easy to state with precision. Writers on international law are accustomed to say that if there has been a "total," "vital," "essential," or "substantial" change of circumstances since the treaty was entered into, the dissatisfied party may demand to be released from further performance of its obligations.[11] Phillimore thus states the rule: "When that state of things which was essential to, and the moving cause of, the promise or engagement, has undergone a material change, or has ceased, the foundation of the promise or engagement is gone and their obligation has ceased."[12] Wharton interpreted the rule of *rebus sic stantibus* to embrace "all cases in which the reason for a treaty has failed, or there has been such a change of circumstances as to make its performance impracticable except at an unreasonable sacrifice."[13] It is quite conceivable that owing to political, economic, social, or even geographical events, the equality of obligations and benefits which may have existed

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[11] Compare G. F. von Martens, Law of Nations (Cobbett's trans. 4th ed.), p. 352; Oppenheim, International Law (3rd ed.), Vol. I, p. 692; Kluber, *Europdisches Völkerrecht*, sec. 165; Gessner, in Holtzendorf, *Handbuch des Völkerrechts*, Bd. III, S. 80; Jellinek, *Die rechtliche Natur der Staatsvertrage*, S. 62 *ff.*; Taylor, International Public Law, sec. 394; and Kaufmann, *op. cit.*, p. 204.

[12] International Law (2nd ed.), Vol. II, p. 109. Hall (International Law, 3rd ed., 351) thus states the principle: "Neither party to a contract can make its binding effect dependent at his will upon conditions other than those contemplated at the moment when the contract was entered into, and on the other hand, a contract ceases to be binding so soon as anything which formed an implied condition of its obligatory force at the time of its conclusion is essentially altered."

[13] Digest of International Law of the United States, Vol. II, sec. 137a. Pradier-Fodéré maintained that treaties ceased to be binding when there had been an "essential modification of the circumstances in view of which the treaty had been concluded." *Droit Int. Pub.*, t. II, pp. 927 *ff.* Rolin-Jaequemyns says the "new circumstances" on which the doctrine of *rebus sic stantibus* is based are "only those which make the execution of the treaty materially or morally impossible or which deprive one party of the advantages which the treaty intended to confer." *Rev. de Droit Int. et de Lég. Comp.*, t. 19, p. 46.

at the time the treaty was entered into become so altered that the obligations are entirely or preponderantly on one side while the benefits are on the other, so that it has ceased to be equal in its operation. It may be assumed that the party which now has the burden of the obligation without the corresponding benefits would never have entered into the treaty had it foreseen the events which produced the ultimate inequality. No rule of construction which holds it to a perpetual performance of the obligation under such circumstances can be defended upon any consideration of equity or justice, and if the obligation were one of private law its performance could not be enforced in a municipal court.

Some writers have defined the circumstances under which the rule of *rebus sic stantibus* is applicable in terms so vague and general that the revision or termination of a treaty might be demanded by one party whenever in its opinion the performance of the obligations conflicted in any degree with its interests. Thus Heffter maintained that a state might repudiate a treaty whenever performance of its obligations conflicted with "the rights and welfare of its people,"[14] while Fiore asserted that "all treaties are to be looked upon as null which are in any way opposed to the development of the free activity of a nation or which hinders the development of its industry or commerce, which prevents the exercise of any of its natural rights or which offends in any manner against the principles of absolute justice or the supreme law of right."[15] Jellinek and Bluntschli interpreted the rule in somewhat the same general fashion,[16] and so did Treitschke, who went to the length of maintaining virtually that every state has a right to denounce its treaties when they become "antiquated" and replace them with others "more ocnsonant with the circumstances."[17] But so extreme an interpretation can hardly be defended, since it would generally make the continuing validity of treaties dependent upon the judgment or caprice of each party. The most authoritative writers of today are agreed that the rule of *rebus sic stantibus* can be

[14] Völkerrecht, sec. 98.

[15] *Nouv. Droit Int. Pub.*, t. I, p. 466.

[16] Jellinek, *op. cit.*, pp. 62 *ff.*, and Bluntschli, *Droit Int. Cod.*, secs., 415, 460.

[17] "Politics" (Eng. trans. by Dugdale and Torben de Bille), Vol. I. pp. 29, 96.

invoked only in very exceptional circumstances, not merely when there has been a natural and normal change of conditions in the life of the state. It is not to be understood that the rule may be invoked in every case where the change of circumstances has resulted merely in the disturbance of the equilibrium of burdens and benefits so that the obligation has become more onerous for one than for the other; the change must be such as to make the continued performance of the obligations flagrantly inequitable, unjust, oppressive, difficult of performance, or derogatory to the dignity or sovereignty of one of the parties.

An extraordinary interpretation of the rule of *rebus sic stantibus* was adopted by certain German and a few American jurists in 1914 in connection with the treaty of 1839 for the neutralization of Belgium. Defending the thesis that the treaty had become obsolete and consequently no longer binding upon Germany, they argued that the increase of Belgium's population between 1839 and 1914, the acquisition by Belgium of the Congo territory in Africa, the increased strength of the Belgian army and the construction by Belgium of certain powerful fortresses, had so altered the situation existing in 1839 as to justify Germany (one of the parties) in regarding the treaty as being no longer binding upon her.[18] The error of this line of reasoning lay in the fact that the changes referred to were not of such a character as to alter in any essential manner, if at all, the obligations of the parties to the treaty of 1839 or the benefits to Belgium and to Europe which it was supposed to create. If the natural increase of population, the acquisition of additional territory, the strengthening of national armaments, etc., are circumstances which render treaties obsolete and terminable at the will of one of the parties, there are few states today which could not rid themselves of their older treaties if they desired to do so.

Manifestly, the difficulty of applying in practice the rule of *rebus sic stantibus* lies in the lack of a common judge to determine in controverted cases whether the change of conditions, which is the basis of the rule, is really such as to justify a demand for revision or termination of the treaty. Under these circum-

[18] See Fuehr, The Neutrality of Belgium, Chs. IV, VII; Hampe in "Modern Germany" (Eng. trans. of a work entitled *Deutschland und der Weltkrieg*), p. 363; Schönborn, *ibid.*, p. 545; and Burgess, The European War of 1914—Its Causes, Purposes and Probable Results, p. 171.

stances each party must be its own judge, but unless the dissatisfied party repudiates by its own unilateral act the treaty, the right of the other party to judge for itself whether the changed situation is such as to justify the claim for a release from the obligations of the treaty, must be admitted. Both parties being judges, therefore, a mutual agreement between them becomes necessary. Where this is not possible, a reasonable solution would be the submission of the difference to the Permanent Court of International Justice or to an arbitral tribunal. Considering that in view of the rapidly changing conditions which states today are undergoing, the rule of *rebus sic stantibus* is likely to be invoked with increasing frequency in the future, it is submitted that every treaty might very appropriately contain a clause recognizing the right of each party to demand a revision whenever in its opinion changed circumstances render it substantially unequal in operation,[19] and providing that in case the parties are unable to agree that the changed situation justifies the demand for revision, the question shall be submitted to the decision of a common judge or arbiter. Many treaties in fact provide for the arbitration of differences between the parties relative to the *interpretation,* and some, for example the tripartite treaty relative to the Saint Gothard Railroad referred to above, provide in addition, that differences involving the application of treaties shall, upon the demand of either party, be submitted to arbitration. Had Germany declined to consent to a revision of the Saint Gothard Treaty, Switzerland would probably have been justified in demanding that the question of her right to a revision be submitted to arbitration.

In the application of the rule of *rebus sic stantibus* one final question remains a subject of controversy, namely, the extent of the right which it gives the dissatisfied party. Some writers, especially the older ones, lay down the proposition that whenever the change of conditions which is the basis of the rule has actually taken place, the treaty is henceforth to be regarded as obsolete and no longer binding upon the dissatisfied party, and

[19] Most of the so-called "unequal" treaties to which China is a party contain a clause to the effect that either party may demand a revision of the treaty as a whole, or of the tariff and commercial provisions, at the end of every ten years. The treaty with Belgium, however, differs from the others in that, apparently, it gives Belgium alone the right to demand revision.

the conclusion is drawn that such party may repudiate it or denounce it by unilateral act.[20] Russia acted upon this principle when in 1870 she declared her withdrawal from the stipulations of the Treaty of Paris of 1856 relative to the neutralization of the Black Sea, and in 1886 from Article 59 of the Treaty of Berlin of 1878 relative to the freedom of the port of Batoum; Austria-Hungary in 1908, when in violation of Article 25 of the Treaty of Berlin she annexed Bosnia and Herzegovina, and Germany in 1914 when she maintained that the Belgian Neutralization Treaty of 1839 had become obsolete through the operation of the rule of *rebus sic stantibus*. It is believed, however, that the rule of *rebus sic stantibus* does not give the dissatisfied party an unqualified right to be the sole judge of the existence of the conditions upon which the rule is based and to repudiate, denounce or withdraw from the treaty at will.[21] The most authoritative recent and contemporary writers on international law maintain, more correctly it is submitted, that the rule merely gives the dissatisfied party a right to demand a revision or termination of the treaty, or its replacement by another. It should first approach the other party or parties, lay before them a statement of the reasons why in its opinion the treaty ought to be revised or terminated and ask for a full consideration by them of the merits of the case.[22] This was the attitude adopted by Secretaries Blaine and Olney in respect to the Clayton Bulwer Treaty which it was desired to replace with another treaty mainly because of changed conditions which had taken place since its conclusion, and this was the course China

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[20] This appears to have been the view of Heffter, Fiore, Treitschke, Jellinek, Pradier-Fodéré, and perhaps Bluntschli.

[21] The U. S. Court of Claims held that the United States was justified in annulling by legislative act in 1798 the treaty of 1778 with France, partly because of changed conditions, but more especially because of infractions of the treaty on the part of France. *The Brig William* and Hooper *v.* United States 22, C. Cls. 201, 408. Generally, where states have denounced treaties in the absence of treaty right, they have justified their action upon other grounds than mere change of conditions, such, for example, as prior breaches by the other party. Compare Crandall, Treaties, Their Making and Enforcement (2nd ed.), p. 442.

[22] Compare as to this Oppenheim, *op. cit.*, Vol. I, p. 692; Westlake, in *Rev. de Droit Int. et de Lég. Comparée*, 1901, p. 394; Fauchille, *op. cit.*, t. I, pt. 3, p. 384; Scelle, 20 *Rev. Gén.* (1913), p. 499; Winfield, 7th ed. of Lawrence's Prins. of Int. Law, p. 306; Bonfils, *Droit International*, sec. 857; and Blociszewski, 17 *Rev. Gén.*, p. 441.

has pursued in respect to her treaty with Belgium.[23] The action of Russia, Austria-Hungary and Germany in withdrawing from the treaties referred to above or in declaring them to be no longer binding, without consulting the other parties and without endeavoring to obtain a release from their obligations, exposed themselves to the charge of being treaty breakers and disturbers of the peace of Europe. In the cases of Russia and Austria-Hungary it is by no means improbable that had the consent of the other parties to a revision of the treaties been requested in advance through negotiation it would have been given.

It is submitted that a dissatisfied party is justified in repudiating or denouncing a treaty which it has freely entered into only in case the other party or parties refuse to consider a request for its revision, termination or replacement by another treaty, or if after considering the request, it is refused, and it is established that in consequence of changed conditions not foreseen or contemplated by the parties at the time of the conclusion of the treaty, it has become so grossly unequal in its operation that the obligations are largely on one side while the benefits are on the other, or that the continued performance of the obligations has become difficult for one party, or interferes with the normal growth of the state or involves a substantial impairment of its dignity and sovereignty. To deny the right of a state to denounce and terminate such a treaty in these circumstances would be to deny it the right to rid itself of an incubus upon its independence and sovereignty to which it never consented and which the other party never meant to impose upon it.[24]

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[23] For. Rels. 1881, p. 554, and Moore, Digest, Vol. III, pp. 189 *ff*. In a memorandum addressed to the President in 1896 Secretary Olney, after reviewing the declarations of Mr. Blaine and Mr. Frelinghuysen, said: "If changed conditions now make stipulations which were once deemed advantageous, either inapplicable or injurious, the true remedy is not in ingenious attempts to deny the existence of the treaty or to explain away its provisions, but in a direct and straightforward application to Great Britain for a reconsideration of the whole matter." Moore, Digest, Vol. III, p. 202. A Committee of the Senate, however, reported that in its opinion the treaty was obsolete and that the United States was under no obligation to be bound by it. Foster, Practice of Diplomacy, p. 304.

[24] Compare Scelle, 20 *Rev. Gén.*, p. 490, who remarks that in such a case the complaining state ought first to endeavor to come to an agreement with its co-signatories, but if it cannot convince them that the principle of *rebus sic stantibus* requires a modification of the treaty, it is no longer bound to consider the treaty as binding upon it and it may therefore denounce it.

If the treaty was never voluntarily entered into by the dissatisfied state, but was exorted from it under pressure, as some of the Chinese treaties were, and if it is based upon an inequality which was never the result of a change of conditions but was deliberately established by the terms of the treaty itself, and especially if it is an inequality which derogates from the sovereignty of the dissatisfied state, its right to terminate the treaty when the other party refuses to consent to its modification, abrogation or replacement by another one, would seem to be incontrovertible, otherwise the postulate that international law rests upon the principle of equality and sovereignty of states has no meaning in practice.

J. W. GARNER.

APPENDIX H.

Treaty Provisions Relating to Extraterritoriality in China. (See Keeton: The Development of Extraterritoriality in China [London 1928] Vol. ii, pp. 308-362).

1. General Regulations of 1843 under which the British trade is to be conducted at the Five Ports of Canton, Amoy, Foochow, Ningpo, and Shanghai: Article XIII.
2. Treaty of Wanghsia, 1844: Articles XVI, XXI, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX.
3. Treaty of Whampoa, 1844: Articles X, XXIII, XXV, XXVI, XXVII, XXVIII, XXIX, XXXI.
4. Treaty of Canton, concluded by Sweden and Norway with China, March 20, 1847: Articles XVI, XVII, XIX, XXI, XXV, XXVI, XXVIII.
5. British Treaty of Tientsin, June 26, 1858: Articles IX, XII, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XLVII, XLVIII, XLIX, LIII.
6. French Treaty of Tientsin, June 27, 1858: Articles VII, X, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX.
7. American Treaty of Tientsin, June 18, 1858: Articles IX, XI, XII, XIII, XIV, XVIII, XXIV, XXVII, XXVIII.
8. Russian Treaties with China, Guaranteeing Extraterritoriality Rights (Terminated 1921 and 1924):
   (a) Treaty of Peking, November 2 (14th), 1860: Article VIII.
   (b) Treaty of St. Petersburg, February 12 (24th), 1881: Articles XI, XVII.
9. German Treaty of Tientsin, 1861 (abrogated 1917 and 1919): Articles XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX.
10. Danish Treaty of Tientsin, 1863: Articles XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII.
11. Dutch Treaty of Tientsin, 1863: Articles VI, VII.
12. Spanish Treaty of Tientsin, 1864: Articles XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX.

13. Belgian Treaty of Tientsin, 1865: Articles XII, XIV, XVI, XVII, XVIII, XIX, XX, XLIII, XLIV.

14. Italian Treaty of Peking, 1866: Articles XV, XVI, XVII, XVIII, XIX, XX, XXII.

15. Austro-Hungarian Treaty of Peking, 1869: (Abrogated 1917 and 1920): Articles XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII.

16. Japanese Treaties with China:
    (a) Treaty of Tientsin, 1871 (Replaced by Treaty of Peking, 1896: Articles III, VIII, IX, X XII, XIII.
    (b) Treaty of Commerce and Navigation, Peking, 1896: Articles XIX, XX, XXI, XXII, XXIII, XXIV.
    (c) Commercial Treaty, 1903: Articles IV, V, XI.
    (d) Chientao Agreement, 1909: Article IV.
    (e) Japanese Law relating to adjudication by Consular Officers in Chientao, April 5, 1910: Articles I, II, III, IV, V.
    (f) Treaty respecting South Manchuria and Eastern Inner Mongolia, 1915: Articles II, III, IV, V.

17. (Superseded by the Japanese treaties on the annexation of Korea by Japan, 1910):
    (a) Regulations for Maritime and overland Trade between Chinese and Korean Subjects, 1882: Articles I, II, V.
    (b) Twenty-four Rules for the Traffic on the Frontier between Liaotung and Korea, 1883: Rules VI, VII, XXIV.

18. Treaty of Tientsin between China and Peru, 1874: Articles XI, XII, XIII, XIV, XV.

19. Treaty of Tientsin between China and Brazil, 1881: Articles IX, X, XI, XII, XIII.

20. Treaty of Peking between Portugal and China, 1887: (An earlier Treaty of Peking, 1862, in which extraterritorial rights were granted to Portuguese subjects in China, was not ratified): Articles XV, XVI, XVII, XVIII, XIX, XLV, XLVII, XLVIII, XLIX.

21. Treaty between China and the Congo Free State, 1898: (This treaty was unratified, but was held to convey extraterrioriality): Articles I, II.

22. Treaty of Washington between Mexico and China, 1899: Articles XIII, XIV, XV, XVI, XVII.

23. Treaty of Peking between Sweden and China, 1908: (concluded following the separation of Sweden and Norway): Articles X, XI, XII.

24. Declaration attached to the Swiss Treaty with China, 1918:

25. Other British Treaties guaranteeing Extraterritorial Rights in China:
    (a) Chefoo Agreement, 1876: Section II.
    (b) Sikkim-Tibet Convention. Trade Regulations, 1893: Articles VI, General Article I.
    (c) Burma Frontier and Trade Convention, 1894.
    (d) Commercial Treaty, 1902: Articles IV, VII, XII.
    (e) Tibet Trade Regulations, 1908: Articles IV, V, IX, X.

26. Other American Treaties, etc., guaranteeing Extraterritorial Rights in China:
    (a) Supplemental Treaty of Peking, 1880: Article IV.
    (b) Commercial Treaty, 1903: Articles X, XI, XV.
    (c) Protocol of Procedure in Mixed Cases in Chinese Courts in Tientsin District, October 24, 1917.

27. Convention of Tientsin, 1886, relating to French extraterritorial rights in China: Articles XVI, XVII.

APPENDIX I.

AGREEMENT RELATING TO THE CHINESE COURTS IN THE INTERNATIONAL SETTLEMENT AT SHANGHAI

ARTICLE I.

From the date on which the present Agreement comes into force, all former rules, agreements, exchanges of notes et cetera having special reference to the establishment of a Chinese court in the International Settlement at Shanghai shall be abolished.

ARTICLE II.

The Chinese Government shall, in accordance with Chinese laws and regulations relating to the judiciary and subject to the terms of the present Agreement, establish in the International Settlement at Shanghai a District Court (Ti Fang Fa Yuan) and a Branch High Court (Kao Teng Fa Yuan Fen Yuan). All Chinese laws and regulations, substantive as well as procedural, which are now in force, or which may hereafter be duly enacted and promulgated shall be applicable in the Courts, due account being taken of the Land Regulations and Bye-Laws of the International Settlement, which are applicable pending their adoption and promulgation by the Chinese Government, and of the terms of the present Agreement.

Judgments, decisions and rulings of the Branch High Court are subject to appeal, according to Chinese law, to the Supreme Court of China.

ARTICLE III.

The former practice of Consular deputies or Consular officials appearing to watch proceedings or to sit jointly in the Chinese court now functioning in the International Settlement shall be discontinued in the Courts established under the present Agreement.

ARTICLE IV.

When any person is arrested by the municipal or judicial police, he shall, within twenty-four hours, exclusive of holidays, be sent to the Courts established under the present Agreement to be dealt with, failing which he shall be released.

ARTICLE V.

The Courts established under the present Agreement shall each have a certain number of procurators to be appointed by the Chinese Government, who shall hold inquests and autopsies (Chien Yen) within the jurisdiction of these Courts and shall otherwise perform their functions in accordance with Chinese law in all cases involving the applications of Articles 103 to 186 of the Chinese Criminal Code, except where the Municipal Police of the International Settlement or the party concerned has already initiated prosecution, provided that all preliminary investigations conducted by the procurator shall be held publicly and counsel for the accused shall have the right to be present and heard.

In other cases arising within the jurisdiction of the Courts, the Municipal Police or the party concerned shall prosecute. The procurator shall have the right to express his views in court in all criminal cases in which the prosecution is initiated by the Municipal Police or the party concerned.

ARTICLE VI.

All judicial processes, such as summonses, warrants, orders, et cetera, shall be valid only after they have been signed by a judge of the Courts established under the present Agreement, whereupon they shall be served or executed by the judicial police or, as provided below, by the process-servers thereof.

No person found in the International Settlement shall be handed over to the extra-Settlement authorities without a preliminary investigation in court at which counsel for the accused shall have the right to be present and heard, except in the case of requests emanating from other modern law courts when the accused may be handed over after his identity has been established by the Court.

All judgments, desisions and rulings of the Courts shall be executed as soon as they become final as a result of the judicial procedure in force in the said Courts. Whenever necessary, the Municipal Police shall render any assistance within their power as may be requested of them.

The process-servers of the Courts shall be appointed by the Presidents of the Courts respectively and their duties shall be to serve all summonses and deliver other documents of the Courts

in connection with civil cases. For the execution of judgments in civil cases, the process-servers shall be accompanied by the judicial police. The officers and members of the judicial police of the Courts shall be appointed by the President of the Branch High Court upon the recommendation of the Municipal Council and shall be subject to dismissal by the President of that Court upon cause shown. Their services will also be terminated by the President at the request of the Municipal Council upon cause shown. They shall wear the uniform designed by the Chinese judicial authorities, and shall be subject to the orders and direction of the Courts and faithful to their duties.

ARTICLE VII.

The House of Detention for civil cases and the Women's Prison attached to the Chinese court now functioning in the International Settlement at Shanghai shall be transferred from that court to the Courts established under the present Agreement and shall be supervised and administered by the Chinese authorities.

All prisoners now serving sentences in the prison attached to the Chinese court now functioning in the International Settlement and those sentenced by the Courts established under the present Agreement shall, at the discretion of the said Courts, serve their sentences either in such prisons in the Settlement or in Chinese prisons outside the Settlement, except that offenders against the Police Offences Code and the Land Regulations and Bye-Laws and persons under arrest awaiting trial serve shall their periods of detention in the Settlement. 8he prisons in the Settlement shall be operated, as far as practicable, in conformity with Chinese prison regulations and shall be subject to inspection, from time to time, by officers appointed by the Chinese judicial authorities.

Persons sentenced to death by the Courts established under the present Agreement shall be sent to the Chinese authorities outside of the Settlement for execution of such sentence.

ARTICLE VIII.

Foreign lawyers duly qualified will be admitted to practice in the Courts established under the present Agreement in all

cases in which a foreigner is a party, provided such foreign lawyer can only represent the foreign party concerned. The Municipal Council may also be represented in the same manner by duly qualified lawyers, Chinese or foreign, in any proceedings in which the Council is complainant or plaintiff or the Municipal Police is the prosecutor.

In other cases or proceedings in which the Council considers the interests of the Settlement to be involved, it may be represented by a duly qualified lawyer, Chinese or foreign, who may submit to the Court his views in writing during the proceedings and who may, if he deems necessary, file a petition in intervention in accordance with the provisions of the Code of Civil Procedure.

Foreign lawyers who are entitled to practice under this Article in the above-mentioned Courts shall apply to the Ministry of Justice for lawyer's certificates and shall be subject to Chinese laws and regulations applicable to lawyers, including those governing their disciplinary punishment.

ARTICLE IX.

Four permanent representatives shall be appointed, two by the Chinese Government and two by the Governments of the other Powers signatory to the present Agreement, who together shall seek to reconcile such differences of opinion regarding the interpretation or application of the present Agreement as may be referred to them by the President of the Branch High Court or by the authorities of the signatory foreign Powers, provided that their Report shall have no binding force upon either party except by mutual consent, it being understood that no judgments, decisions, rulings or orders of the Court, as such, shall be referred to the aforesaid representatives for consideration.

ARTICLE X.

The present Agreement and the attached Notes shall enter into effect on April 1st, 1930 and shall continue in force for a period of three years from that date, provided that they may be extended for an additional period upon mutual consent of the parties thereto.

NANKING,
February 17, 19th year R. C. (1930).

Hsu Mo
on behalf of the
Minister for Foreign Affairs.

J. de Pinto Dias
on behalf of
The Brazilian Chargé d'Affaires.

In the name of the American Minister,
Joseph E. Jacobs.

W. Meyrick Hewlett
on behalf of
His Britannic Majesty's Minister.

L. Grönvold
on behalf of
The Norwegian Chargé d'Affaires.

F.E.H. Groenman
on behalf of
The Netherlands Chargé d'Affaires.

In the name of the French Minister,
E. Koechlin

NOTES FROM HEADS OF LEGATIONS CONCERNED TO MINISTER FOR FOREIGN AFFAIRS

Nanking,
February 17th, 1930.

Sir,

With reference to the Agreement which we have signed to-day concerning the establishment of a District Court and a Branch High Court in the International Settlement at Shanghai, we have the honour to request your confirmation of our understanding on the following points:

It is understood that the Courts established under the present Agreement shall exercise jurisdiction over civil and criminal cases as well as police offences and inquests in the International Settlement at Shanghai, provided that the jurisdiction of the said Courts over persons shall be the same as that of other Chinese Courts and provided that their territorial jurisdiction shall be the same as that of the Chinese court now functioning

in the International Settlement at Shanghai except (a) mixed criminal cases arising on private foreign property outside the limits of the Settlement and (b) mixed civil cases arising in areas surrounding the Settlement.

2. It is understood that the present practice regarding the respective jurisdictions of the Chinese Court now functioning in the International Settlement and the Court existing in the French Concession shall be followed, pending a definite arrangement between the Chinese Government and the authorities concerned.

3. It is understood that as far as practicable, Chinese shall be recommended by the Municipal Council to serve as officers and members of the judicial police of the Courts established under the present Agreement. It is further understood that among the officers of the judicial police appointed by the President of the Branch High Court under Article VI of the present Agreement, there will be one to be designated by the Municipal Council, to whom will be alloted by the President an office on the Court premises and who will make an entry of all judicial processes of the Courts, such as summonses, warrants, orders and judgments, for the purpose of service or execution in accordance with the provisions of the above-mentioned Article.

4. It is understood that the establishment of the Courts provided for in the present Agreement in no way affects the validity of judgments rendered by the Chinese court now functioning in the International Settlement and its predecessor, and that such judgments shall be considered as final and valid except where an appeal has been lawfully taken or reserved. It is further understood that the judgments of the Courts established under the present Agreement shall be on the same foreign as regards validity as the judgments of all other Chinese Courts

5. It is understood that the present Agreement does not in any way affect or prejudice any future negotiations regarding the status of extra-Settlement roads.

6. It is understood that the sum of sixty thousand dollars ($60,000) now on deposit with the Bank of China to the credit of the present Chinese court in the International Settlement shall be maintained by the Chinese Government to the credit of the new Courts established under the present Agreement.

7. It is agreed that in accordance with Chinese law, there shall be maintained by the Courts established under the present

Agreement, a storage room for articles confiscated by the Courts, which remain the property of the Chinese Government, it being understood that confiscated opium and instruments for the smoking and preparation thereof shall be burned publicly in the International Settlement every three months and that the Municipal Council may present to the Presidents of the Courts for transmission to the Ministry of Justice such suggestions as it may desire to make regarding the disposal of confiscated arms.

8. It is understood that upon the coming into force of the present Agreement, all cases pending in the Chinese court now functioning in the International Settlement shall be dealt with in the Courts established under the present Agreement in accordance with the procedure in force in the latter Courts, provided that the proceedings in mixed cases shall, as far as practicable, be continued from the point where they are taken over and concluded within a period of twelve months which period may be extended at the discretion of the Court when the circumstances in any case so warrant.

We avail ourselves of this opportunity to renew to Your Excellency the assurance of our highest consideration.

J. de Pinto Dias
on behalf of
The Brazilian Chargé d'Affaires.

In the name of the American Minister,
Joseph E. Jacobs.

W. Mevrick Hewlett
on behalf of
His Britannic Majesty's Minister.

L. Grönvold
on behalf of
The Norwegian Chargé d'Affaires.

F. E. H. Groenman
on behalf of
The Netherlands Chargé d'Affaires.

In the name of the French Minister,
E. Koechlin

His Excellency,
Dr. Chengting T. Wang,
Minister for Foreign Affairs
Nanking.

NOTES FROM MINISTER FOR FOREIGN AFFAIRS TO HEADS OF LEGATIONS CONCERNED

Nanking,
February 17th, 1930.

Sir,

I have the honour to acknowledge the receipt of your Note referring to the Agreement which we have signed today concerning the establishment of a District Court and a Branch High Court in the International Settlement at Shanghai, in which you request my confirmation of the following points:

"1. It is understood that the Courts established under the present Agreement shall exercise jurisdiction over civil and criminal cases as well as police offences and inquests in the International Settlement at Shanghai, provided that the jurisdiction of the said Courts over persons shall be the same as that of other Chinese Courts and provided that their territorial jurisdiction shall be the same as that of the Chinese court now functioning in the International Settlement at Shanghai, except (a) mixed criminal cases arising on private foreign property outside the limits of the Settlement and (b) mixed civil cases arising in areas surrounding the Settlement.

"2. It is understood that the present practice regarding the respective jurisdictions of the Chinese court now functioning in the International Settlement and the Court existing in the French Concession shall be followed, pending a definite arrangement between the Chinese Government and the authorities concerned.

"3. It is understood that as far as practicable, Chinese shall be recommended by the Municipal Council to serve as officers and members of the judicial police of the Courts established under the present Agreement. It is further understood that among the officers of the judicial police appointed by the President of the Branch High Court under Article VI of the present Agreement, there will be one to be designated by the Municipal Council, to whom will be allotted by the President an office on the Court premises and who will make an entry of all judicial processes of the Courts, such as summonses, warrants, orders and judgments, for the purpose of service or execution in accordance with the provisions of the above-mentionel Article.

"4. It is understood that the establishment of the Courts provided for in the present Agreement in no way affects the validity of judgments rendered by the Chinese court now functioning in the International Settlement and its predecessor, and that such judgments shall be considered as final and valid except where an appeal has been lawfully taken or reserved. It is further understood that the judgment of the Courts established under the present Agreement shall be on the same footing as regards validity as the judgments of all other Chinese Courts.

"5. It is understood that the present Agreement does not in any way affect or prejudice any future negotiations regarding the status of extra-Settlement roads.

"6. It is understood that the sum of sixty thousand dollars ($60,000) now on deposit with the Bank of China to the credit of the present Chinese court in the International Settlement shall be maintained by the Chinese Government to the credit of the new Courts established under the present Agreement.

"7. It is agreed that in accordance with Chinese law, there shall be maintained by the Courts established under the present Agreement, a storage room for articles confiscated by the Courts, which remain the property of the Chinese Government, it being understood that confiscated opium aand instruments for the smoking and preparation thereof shall be burned publicly in the International Settlement every three months and that the Municipal Council may present to the Presidents of the Courts for transmission to the Ministry of Justice such suggestions as it may desire to make regarding the disposal of confiscated arms.

"8. It is understood that upon the coming into force of the present Agreement, all cases pending in the Chinese court now functioning in the International Settlement shall be dealt with in the Courts established under the present Agreement in accordance with the procedure in force in the latter Courts, provided that the proceedings in mixed cases shall, as far as practicable, be continued from the point where they are taken over and concluded within a period of twelve months which period may be extended at the discretion of the Court when the circumstances in any case so warrant."

In reply I have the honour to confirm the understanding of the points as quoted above.

(Signed) HSU MOO
on behalf of
the Minister for Foreign Affairs.

Sir Miles W. Lampson (Great Britain)
Mr. Nelson T. Johnson (U. S. A.)
Count D. de Martel (France)
Mr. N. Aall (Norway)
Mr. Le Baron G. W. de Vos van Steenwijk (Netherlands)
Mr. Pedro Eugenio Soares (Brazil)

APPENDIX J.

FOREIGN RESIDENTIAL CONCESSIONS AND SETTLEMENTS IN CHINA.

At present Great Britain has one settlement and two concessions, France has four concessions, Italy has one concession and Japan has eight settlements, "exclusively for the use of the Japanese," i.e., no Chinese nor citizens or subjects of any other nation can hold lease in such Settlements. There are two International Settlements, viz., the Shanghai International Settlement and the International Settlement at Kulangsu (Amoy). The words "settlement" and "concession" are used in a traditional sense without any legal connotation.

In addition, there are special places which, for want of better terms, can be called "Areas for Foreign Residence." The special areas in Wuhu and Chefoo and one or two others fall within this category. Over such areas the Chinese Government exercises full control in regard to all administrative matters. Legally they are quite different from the settlements and concessions such as those mentioned above.

FRENCH CONCESSION AT SHAMEEN (CANTON).

Date of Granting. Deed of Lease for the French Concession at Shameen was signed by the local Chinese and the French authorities in 1861.

Status of the Concession. The said document provided that the Chinese authorities have the right to collect a yearly rent on the lot of land at Shameen defined as the French Concession. The French Consul at Canton continues up to the present to pay ninety-nine dollars to the local Chinese authorities as annual rent. A Municipal Council consisting of three persons has the full control over the municipal affairs of the Concession, the French Consul being the chairman of the Council.

Circumstances under which the grant was made. This Concession was granted by the Chinese Government to the French Government under same circumstances as the Shameen British Concession was granted to the British Government.

FRENCH CONCESSION AT TIENTSIN.

Date of Granting. Land Regulations for the French Concession at Tientsin were signed by the High Commissioner of Trade and the French Minister to China in 1861.

Status of the Concession. The eleventh clause of the said Regulations provides that the annual rent of 2000 copper cash per *mou* shall be collected by the French Consul at Tientsin, and he shall hand over half of the total annual rent on the ground, defined as the French Concession, to the Chinese local authorities and shall keep the other half as contributions to the expenses for building or repair of roads and other public works, and for police service.

A Municipal Council of nine members has the control over the municipal affairs of the concession. The councillors are elected annually by qualified electors. Five of the councillors must be French. The French Consul shall be concurrently the chairman of the Council.

Circumstances under which the grant was made. Great Britain obtained a concession at Tientsin and France asked the same privllege.

FRENCH CONCESSION AT HANKOW.

Date of Granting. Lease for the French Concession at Hankow was signed in 1896 by the Tao Tai and the Customs Tao Tai on the one part and the French Consul at Hankow on the other.

Status of the Concession. Said lease provided that the Chinese Government shall continue to collect the annual land tax together with the "rice dues" of about 37 taels on the lot of the land (187 *mou*), defined as the French Concession, that the words "leased in perpetuity" shall be put in every deed of lease held by individuals and that no Chinese shall have the right to reside in the Settlement. In the Lease for the Extension of the French Concession at Hankow which was signed in 1902, China's right to collect annual land tax on the lot of land, defined as the Extension of the French Concession, is provided. The Municipal Council has control over all the municipal affairs of the Concession. Half of the councillors are French, and no Chinese is elegible to be elected as councillor. The

French Consul at Hankow is concurrently the chairman of the Council, which with the authorization of the French Minister to China he may dissolve.

Circumstances under which the grant was made. Granted immediately following the "Triple Intervention," i.e., by Russia, France and Germany, who sent a joint note to Japan before May 8, 1895, recommending that Liaotung be retroceded to China. Consequent upon this action each of the three powers obtained a concession established at Hankow.

BRITISH CONCESSION AT SHAMEEN (CANTON).

Date of Granting. Deed of Lease for this concession was signed by the Viceroy and the British Consul at Canton in 1861.

Status of the Concession. Said deed provided that the British Government binds itself to pay to the Chinese Government a yearly rent of 396,000 copper cash (1500 copper cash per *mou*) and that a lot of land at Shameen is granted to the British authorities to be held by them in perpetuity for such uses and purposes as the British Government shall see fit. An Executive Committee of Five has control over the municipal affairs of the Concession.

Circumstances under which the grant was made. Following the conclusion of the Treaty of Tientsin between China and Great Britain, the British and French authorities united in pressing the Chinese Government for concessions at Canton. Consequently, a plot of land at Shameen was granted to each of the two countries.

BRITISH CONCESSION AT TIENTSIN.

Date of Granting. No formal deed of lease had ever been executed in respect to this concession but there exist official receipts given annually by the District Magistrate of Tientsin to the British Consul for the ground rent. On the face of such receipts the ground is presumably rented in perpetuity to the British Government. In 1897 the Customs Tao Tai communicated to the British Consul at Tientsin a note acknowledging the Regulations for the Extension of the British Concession (800 *mou*).

Status of the Concession. The official rent receipt states that the total annual rent for the ground, 412 *mou*, originally taken by the British as concession amounts to 618,987 copper cash

(1500 copper cash per *mou*). In the Regulations referred to it is provided that a Municipal Council shall be established in the Concession. In 1901 an Agreement for the Extension of the British Concession was signed by the Tao Tai of Tientsin and the British Consul. The Agreement contains five clauses the first of which provides that a lot of land about 3000 *mou* adjacent to the British Concession shall be reserved for the Extension of the Concession. The lot of land earmarked for an American concession was arranged to be annexed to the British Concession in 1902, subject, however, to the "right of recall." The so-called extra-mural area was added to the Concession in the following year. At present the total area of the British Concession measures about 6300 *mou*.

Circumstances under which the grant was made. Consequent upon the conclusion of the Treaty of Tientsin between China and Great Britain. In 1860 the British Minister to China pressed the Chung-Li Yamen for a concession at Tientsin and his demand was granted.

BRITISH SETTLEMENT AT NEWCHWANG.

Date of Granting. Lease for the British Settlement at Newchwang was signed by the representatives of the High Commissioner of Trade and the British Consul in 1861.

Status of the Settlement. As provided in said lease, annual land tax on the ground (defined as British Settlement) amounted to 67,250 small cash, to be paid by the Consul to the Hai-ch'eng magistrate on a fixed date every year; and affairs relating to building or repair of public roads, jetties and the like were in the hands of the British Consul. In 1898 the British Consul at Newchwang sent a note to the Customs Tao Tai asking for an extension of the settlement on the ground that half of the land in the settlement had been washed away by the Liao River. No document available to show that such extension was ever granted. In the course of the last thirty two years the Liao River engulfed considerable portion of the ground of the British Settlement but the lease as such still remains.

Circumstances under which the grant was made. It was granted two years after the conclusion of the Treaty of Tientsin between China and Great Britain upon demand of the British Government.

ITALIAN CONCESSION AT TIENTSIN.

Date of Granting. Regulations for the Italian Concession at Tientsin was signed by the Customs Tao-Tai and Italian Minister to China in 1902.

Status of the Settlement. Said document contains fourteen clauses, the first of which provides that the Italian Government shall enjoy in the Concession same rights and privileges as other governments enjoy in their respective concessions in China. pay to the local Chinese authorities the annual land tax of 1000 The twelfth clause provides that the Italian authorities shall copper cash per *mou.* In 1923 the Italian Government made the concession a self-governing municipality under the direction and supervision of the Italian Consul at Tientsin, the Italian Minister to China and the Italian Foreign Office. The administration of the municipality is vested in the Municipal Council, which consists of five councillors and three advisers. Three of the councillors shall be Italians and all the advisers shall be Chinese. The chairman of the Council is elected by the councillors. There are four committees on matters relating to police, finance, public works and sanitation respectively. All the committee members are appointed by the Consul. No decision of the Council shall be operative without the authorization of the Italian Consul at Tientsin.

Circumstances under which the grant was made. One year after the signature of the Boxer Protocol (1901) the Italian Minister to China asked for a concession at Tientsin.

THE SETTLEMENT OF KULANGSU.

Date of Granting. Land Regulations for the Settlement of Kulangsu, Amoy, was signed in 1902 by the Tao-Tai, Marine Sub-Prefect, Likin Deputy, Foreign Affairs Deputy on the part of the Chinese Government, and the Japanese Consul, British Consul, U. S. Consul for Spain and for Denmark, and the Consul for the Netherlands and Vice-Consul for Sweden and Norway on the part of the Governments concerned.

Status of the Settlement. Said Regulations provide that a Municipal Council shall be appointed for the management of municipal affairs. The Municipal Council shall consist of five or six persons who shall be elected by qualified voters annually,

(Chinese have no right to elect nor to be elected as councillor). It is provided in the Regulations that the Chinese authorities shall continue to collect land taxes and foreshore taxes. The establishment of a Mixed Court is provided therein. The Regulations have been amended since they were first made. At present the Municipal Council consists of five foreigners and three Chinese. There are five Chinese deputies assigned by the Council to work in the divisions of police, education, finance, public works, and sanitation respectively. These deputies have a right to make proposals to the Council but no right to vote. The Chinese councillors and deputies are elected by the Chinese Advisory Body attached to the Municipal Council.

Circumstances under which the grant was made. One year after the signature of the Boxer Protocol the International Settlement at Kulangsu was granted.

JAPANESE SETTLEMENT AT HANKOW.

Date of Granting. Regulations for the Japanese Settlement at Hankow were signed by the Tao-tai and the Japanese Acting Consul-General at Hankow in 1898.

Status of the Settlement. Said Regulations provide that the Japanese Consul shall collect the annual land tax, including "rice dues" of 3,117 taels per *mou* and shall hand over the total sum to the district magistrate of Han Yang, that a Mixed Court shall be established in the Settlement, and that the most favoured-nation clause in regard to privileges and rights of concession and settlement already established or to be established in China shall apply to the Japanese Settlement at Hankow. It is provided in the Regulations that the Japanese Consul shall have control over matters relating to police, roads, sewers, and go-downs in the Settlement. The Japanese Settlement at Hankow. It is provided in the Regulations that the Japanese Hankow was extended in 1906. The Japanese Government is keeping a garrison in the Settlement, which it refuses to withdraw despite China's protest.

Circumstances under which the grant was made. Great Britain, Russia, Germany, and France obtained concessions at Hankow in the nineties and Japan demanded the same status.

JAPANESE SETTLEMENT AT CHUNGKING.

Date of Granting. Regulations for the Japanese Settlement at Chungking were signed by the Customs Tao-Tai and the Japanese Consul at Chungking on September 24th, 1901.

Status of the Settlement. The third clause of the said Regulations provides that the Japanese Consul shall have full control over matters relating to police and roads in the Settlement and he shall exercise all administrative powers therein and shall attend to the matters of building or repair of roads, bridges, sewers and wharves. The sixth clause provides that the Japanese Consul shall collect the annual rent from Japanese leaseholders and hand over the same to the local Chinese authorities. The tenth clause provides that leaseholders shall have the right to ask for renewal of their leases at the end of successive periods of thirty years each. The lease shall be cancelled at the end of the period in case the leaseholder concerned fails to ask for renewal. The fifteenth clause provides that the Japanese Consul shall prohibit Japanese subjects to manufacture articles in the city of Chungking; provided, however, that the Chinese authorities shall not allow other foreigners to manufacture articles therein.

Circumstances under which the grant was made. The Japanese Settlement at Chungking is the last of the eight Settlements established by the Japanese Government in the territory of China, some of which are in the interior. The grant was given seventeen days after the signature of the Boxer Protocol.

JAPANESE SETTLEMENT AT SHASI.

Date of Granting. Regulations for the Japanese Settlement at Shasi were signed by the Provincial Judicial Commissioner acting concurrently as Customs Tao-Tai and the Japanese Acting Consul-General at Shanghai in 1898.

Status of the Settlement. It is provided in said document that (1) the Chinese Government retains the right to collect the annual land tax on the ground defined as the Settlement (1000 copper cash per *mou*), that (2) the Japanese Consul shall have full control over matters relating to police and roads in the settlement, and that (3) the Chinese Government agrees to the establishment of a Mixed Court in the Settlement.

Circumstances under which the grant was made. Three years after the conclusion of Treaty of Shimonoseki the Japanese Government asked for a settlement at Shasi.

JAPANESE SETTLEMENT AT FOOCHOW.

Date of Granting. Regulations for the Japanese Settlement at Foochow were signed by the Tao Tai of Military Affairs acting concurrently as Trade Commissioner and the Acting Consul for Japan at Foochow on March 28, 1898.

Status of the Settlement. The second clause of the Regulations provides that the Japanese Government shall have full control over all matters relating to roads and police, and shall exercise all administrative powers in the Settlement, and that the Japanese Consul shall attend to and have control over matters relating to the building or repair of roads, bridges, sewers and wharves. The third clause stipulates that deeds of lease held by Japanese subjects in the Settlement shall be valid for thirty years, and they may be renewed at the expiration of such period, The fifth clause provides that the Japanese Consul shall collect the Treaty rent on the land leased by the Japanese subjects and hand over the same to the local Chinese authorities.

Circumstances under which the grant was made. Notes were exchanged between China and Japan in regard to non-alienation of Fukien Province on March 22, 1898. At this time the powers began to "earmark" the so-called spheres of influence in the territory of China. The Japanese Government asked for a settlement at Foochow and the Chinese Government yielded.

JAPANESE SETTLEMENT AT SOOCHOW.

Date of Granting. The Regulations for the Japanese Settlement at Soochow were signed in 1899 by the Provincial Finance Commissioner of Kiangsu and the Customs Tao Tai on the one part and the Japanese Consul at Shanghai on the other.

Status of the Settlement. The Chinese Government retains the right to collect annual land tax (3000 copper cash per *mou* for the first ten years after signing the Regulations and 4000 copper cash thereafter). The Japanese Consul shall have full control over the police and matters relating to roads at the Settlement.

Circumstances under which the grant was made. That Soochow should be an Open Port was provided for in the 6th article of the Treaty of Shimonoseki. It was further provided in the Protocol that Japanese settlements might be established at open ports of China. Those documents served as basis for Japan's demand for a settlement at Soochow.

JAPANESE SETTLEMENT AT AMOY.

Date of Granting. Regulations for the Japanese Settlement at Amoy were signed in 1898 by the Provincial Judicial Commissioner and the Tao Tai of Military Affairs on the one part and the Japanese Consul at Amoy on the other.

Status of the Settlement. The second clause of the said regulations stipulates that the Japanese Government shall have full control over all matters relating to roads and police and shall exercise all administrative powers in the Settlement, and that the Japanese Consul shall have control over all matters in regard to the building or repair of roads, bridges, sewers and wharves. In the Supplementary Regulations for the Japanese Settlement at Amoy signed in 1898 it is provided that the Japanese Consul shall collect yearly rents from leaseholders and hand over the same to the local Chinese authorities.

Circumstances under which the grant was made. The Japanese Government asked for a settlement at Amoy, basing its demand on the first article of the Protocol in regard to Japanese Settlements at open ports of China. The Chinese Government yielded to the demand.

JAPANESE SETTLEMENT AT TIENTSIN.

Date of Granting. Regulations for the Japanese Settlement at Tientsin were signed in 1898 by the Customs Tao Tai and the Tao Tai of Military Affairs on the one part and the Japanese Consul at Tientsin on the other.

Status of the Settlement. Said document provides that Japan shall pay an annual land tax of 1000 copper cash per *mou* to the local Chinese authorities. The ninth article of Supplementary Regulations for the Japanese Settlement at Tientsin signed in 1898 provides for the establishment by the Japanese authorities of a police office, which is to have control over all police matters

within the Settlement. The Japanese Settlement at Tientsin is a self-governing municipality; its general municipal affairs are taken care of by an executive committee of ten which is under the supervision and control of the Japanese Consul at Tientsin, the Japanese Minister to China and the Ministry of Foreign Affairs at Tokyo. No Chinese has ever been elected to serve on the committee. The power to police the Settlement is vested in the Japanese Consul.

Circumstances under which the grant was made. Pursuant to the provision of the first article of the Protocol in regard to Japanese Settlements at open ports of China, the Japanese Minister to China negotiated with the Chung Li Yamen for a settlement at Tientsin.

JAPANESE SETTLEMENT AT HANGCHOW.

Date of Granting. The Regulations for the Japanese Settlement at Hangchow were signed by the Provincial Judicial Commissioner of Chekiang and the Japanese Consul at Hangchow in 1897.

Status of the Settlement. Said Regulations provide that (1) the Japanese Consul shall collect an annual land tax of two dollars per *mou* and shall hand the same over to the local Chinese authorities, (2) the deeds of lease held by Japanese subjects must be renewed at the expiration of successive periods of thirty years each, and (3) no Chinese nor subject of any other nation shall have the privilege to lease land within the Settlement. The second clause of the Supplementary Regulations for the Japanese Settlement at Hangchow signed in 1897 provides that the Japanese Consul shall have full control over matters relating to police and roads at the Settlement. A Mixed Court, though provided for in the Regulations and established accordingly, ceased to function in 1927 when the Provincial Government refused to appoint a Chinese deputy to the Court.

Circumstances under which the grant was made. In pursuance of the provision in Article I of the Protocol in regard to Japanese Settlements at open ports of China, the Japanese Government asked for a settlement at Hangchow.

APPENDIX K.

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